

*United States Court of Appeals
for the Second Circuit*



APPENDIX

75-767616

**United States Court of Appeals
For the Second Circuit**

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ROSLIE M. ARLINGHAUS, Executrix
of the Will of Frank H. Arlinghaus,
and ROSALIE M. ARLINGHAUS,
individually,

Plaintiff-Appellant,

against

J. RICHMOND RITENOUR and JOHN J. LIPSKY,

Defendants-Appellees,

and

MIRIAM PEPPER and SIDNEY PEPPER,

Defendants

*On Appeal from the United States District
Court for the Southern District of New York*

JOINT APPENDIX

(Vol. I)
(A-1 to A-295)

CASEY, LANE & MITTENDORF
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PAGINATION AS IN ORIGINAL COPY

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CIVIL DOCKET 68 Civ. 3537

68 Civ. 3537

UNITED STATES DISTRICT COURT

Date: 10-21-68 by plaintiff.

JUDGE STEWART

WEEKS

ROSLIE M. ARLINGHAUS, Executrix of the Will
of Frank H. Arlinghaus, and
ROSLIE M. ARLINGHAUS, individually.

v.

J. RICHMOND RITENOUR, 10-01-75
JOHN J. LIPSKY, 10-01-75
MIRIAM PEPPER and
SIDNEY PEPPER

ATTORNEYS

For plaintiff:
Gaisey Lane Mittendorf
26 Biway, 10004

For defendant Harper & Matthews, 60 Wall St.
Dugan & Rosen (for Sidney & Miriam Pepper)
25 West 43rd St., 10001 - 560-6720, 18057
Rogers, Hoge & Hale, 60 Wall St.,
(for Ritenour & Lipsky) - 212-434-0000
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CHARLES A. SCHARF
Sub-5/14/73 (J. Richmond Ritenour & Lipsky)
60 E. 42nd St., NYC, NY 10017 (Rm 223A)
(212) 986-4141

subst. 9-16-75 for Sidney Pepper:
Brauner Baron Rosenzweig & Kligler
120 Broadway, NYC 10005 - 732-5535

STATISTICAL RECORD

COSTS

DATE

NAME OR
RECEIPT NO.

REC.

DISP.

J.S. 5 mailed

X

Clerk

7-3-68

CASBY L:
U. S. TREAS

15

15

J.S. 6 mailed

Marshal

Basis of Action:

Securities Exchange Act
\$842,656

Docket fee

Action arose at:

Witness fees

Depositions

66 CIV. 3527 Rosalie M. Arlinghaus, etc., et al. vs. J. Richmond Ritenour, etc.

JUDGE STEWART~~JUDGE STEWART~~
~~JUDGE STEWART~~Date Order
Judgment)

DATE	PROCEEDINGS
Sep. 3-68	Filed complaint and issued summons.
Sep. 3-68	Filed affdvt. & order appointing Irving Levine to serve summons & complaint.
Sep 10-68	Filed affdvt. of Irving Levine of service of summons & complaint as follows: J. Richmond Ritenour personally 9-4-68 Sidney Pepper personally 9-4-68
Sep 16-68	Filed affdvt. of Irving Levine of service of summons & complaint on Miriam Pepper personally 9-6-68
Sep 24-68	Filed defts' (Ritenour, et al.) notice to take deposition of pltff.
Sep 24-68	Filed summons & return, served John J. Lipsky personally 9-9-68
Sep 27-68	Filed stip. & order extending time of defts. (Ritenour, et al.) to answer to 10-15-68.-Bryah, J.
Oct. 15-68	Filed ANSWER of Miriam Pepper to complaint.
Oct. 15-68	Filed ANSWER of Sidney Pepper to complaint.
Oct 15-68	Filed stip. & order extending time of defts. (Miriam & Sidney Pepper) to answer to 10-15-68.-Ryan, J.
Oct 21-68	Filed pltff's jury demand
Oct 23-68	Filed affdvt. of Donna Hogan of service of pltff's jury demand on defts. (Pepper)
Oct 24-68	Filed defts' (Ritenour, et al.) ANSWER
Nov. 13-68	Filed Notice of Motion re: Fix Schedule for Deposition. Ret. 11/21/68, together with affidavit in support thereof.
Nov. 13-68	Filed Affidavit pur. to Rule 9(r).
Nov. 13-68	Filed Plaintiff's Memorandum in support.
Nov. 20-68	Filed Opposing A affidavit to plaintiff's motion.
Nov. 21-68	Filed (in cur) A affidavit of Jack A. Rosen.
Nov. 20-68	Filed Memorandum in opposition to pltff's motion for priority of depositions.
Nov. 21-68	Filed MEMO END. on motion papers filed 11/13/68. Motion denied following argument. SETTLE ORDER ON NOTICE. Mansfield, J.
Dec. 9-68	Filed Order that plaintiff's motion is in all respects denied; further ordered that deposition of plaintiff shall commence as indicated, etc. Mansfield, J. (mailed notice)
Dec. 23-68	Filed consent and order substituting Ide & Higley, 11 East 42nd St., N.Y. as attorneys for deft. J. Richmond Ritenour, in place and stead of Rogers, Hoge & Hills. So ordered. Clerk.
Dec. 23-68	Filed consent and order substituting Ide & Higley, 11 East 42nd St. N.Y. as attorneys for deft. John J. Lipsky, in place and stead of Rogers, Hoge & Hills. So ordered. Clerk.
Jan. 13-69	Filed Pltff notice to take deposition of Deft.
Jan. 10-69	Filed Stip that deposition of Pltff Deft (Sidney Pepper) will commence on Jan 30, 69
Nov 3-71	Filed pltff's affdvt & notice of motion directing deft Lipsky to appear for his deposition ret. 11-18-71
Nov 3-71	Filed pltff's memorandum of law
Nov 18-71	Filed in Court affdvt of John Lipsky (deft) in opposition to pltff's motion
Nov 18-71	Filed in Court reply affdvt of Preben Jensen (for pltff) in reply to Lipsky's opposing papers
Nov 18-71	Filed memo endorsed on motion filed 11-3-71--Motion disposed of in accordance with the Court's rulings following argument--Settle order on notice--Bonsal, J.
Dec 1-71	Filed ORDER that deft Lipsky is urged to make himself available for deposition in NY, in which event his reasonable expenses for travel, lodging & meals shall be taxed against pltff in the event that judgment shall be entered in favor of deft etc.--Bonsal, J. m/n
Jan 5-72	Filed affdvt & stip & order of substitution of atty. for defts! Miriam & Sidney Pepper Pierce, J.
May 14, 73	Filed Deft Ritenour and Lipsky's Affdvt Consent to change Atty to Charles A. Scharf, 60 E 42 St. 10017. So Ordered Stewart, J. & Affdvt of Charles A. Scharf.

68 CIV. 3537 ROSALIE M. ARLINGHAUS, etc. vs J. RICHMOND RITTENOUR, ET AL. 68 CIV. 3537

DATE	PROCEEDINGS
7/2/74	PRE-trial before Pollack, J.
8-19-75	Re-assigned to Judge Werker. - m/n
9-24-75	PRE-TRIAL CONFERENCE HELD BY Werker, J.
05-12-75	NON-JURY trial begun before Werker, J.
5-13-75	trial continued
5-14-75	trial continued "nd concluded. - Decision reserved - post-trial briefs to be submitted. -- Werker, J.
07-01-75	Filed defendants' Ritenour and Lipsky post-trial brief
07-01-75	Filed Original trial exhibits submitted by defts.
07-01-75	Filed transcript of record of proceedings, dated May 12, 13, 14, 1975
08-28-75	Filed order that action is referred to Magistrate Hartenstein, for an accounting in accordance with opinion #43010. So ordered. -- Werker, J. m/n
08-28-75	Filed OPINION #43010..for reasons stated herein, action against deft. Miriam Pepper is dismissed, other defendants - only liable to pltf. as indicated herein. In accordance with the stipulation of the parties at trial, the affirmative defenses based upon the release agreement voided by Judge Frankel are dismissed. Pepper will be liable for the profits his wife received, and is hereby ordered to account to pltf. for those profits. The case will be referred to a Magistrate for that purpose. The Court likewise awards plaintiff punitive damages for Pepper's breach of fiduciary duty. In this case the court chooses to limit the award of punitive damages to the same amount plaintiff wins as compensatory damages upon Pepper's accounting. So ordered. -- Werker, J. m/r
08-28-75	Filed consent pre-trial order -- Werker, J. (signed on 9-6-75)
08-28-75	Filed pltf's post trial brief.
08-28-75	Filed deft. Pepper's answering brief.
09-16-75	Filed stip. and order substituting Attorney for deft. Sidney Pepper, -- Werker, J.
10-01-75	Filed order and judgment that J. Richmond Ritenour and John J. Lipsky be severed as defendants from this action; ordered that the case is dismissed on the merits as to J. Richmond Ritenour and John J. Lipsky. Further ordered that J. Richmond Ritenour and John J. Lipsky recover of the pltf. their costs to be taxed. So ordered. -- Werker, J. -- Judgment entered. - Clerk.
10-31-75	Filed plaintiff's notice of appeal to the USCA for the 2nd Circuit from judgment entered on 10-1-75 - copies mailed to Charles A. Sharf, P.C. and Brauner, Baron, Rosenzweig & Kligler, Esqs.
10-22-75	Filed Bill of Costs taxed in the sum of \$400.86 in favor of defendants Ritenour and Lipsky, as against plaintiff and added to the judgment. - Docketed as judgment #75,834.
11-21-75	Filed pltfs supersedeas bond in the sum of \$694.95
12-19-75	Filed notice that the record on appeal has been certified and transmitted to the USCA
12-19-75	Filed Stip. Dmg. Exh.to U.S.C.A.
12-19-75	Filed Stip. submitting true copy of document to U.S.C.A.
12-23-75	Filed true copy of USCA order and stipulation ext. time to submit appeal to 12-19-75.
02-09-76	Filed notice that the supplemental record on appeal has been certified and transmitted to the USCA for the 2nd Circuit.
02-9-76	Filed stipulation designating exhibits to be transmitted to the U.S.C.A.
02-9-76	Filed stipulation re: inclusion of true copy of trial exhibit "A" as part of record on appeal.

Court 1819-1

A4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
ROSALIE M. ARLINGHAUS, Executrix of :
the Will of Frank H. Arlinghaus,
and ROSALIE M. ARLINGHAUS, individual-
ly, :

Plaintiff, :
-against- : COMPLAINT

J. RICHMOND RITENOUR, JOHN J. LIPSKY, :
MIRIAM PEPPER and SIDNEY PEPPER,

Defendants. :

-----x
Plaintiff, by Casey, Lane & Mittendorf, her
attorneys, for her complaint against defendants alleges:

1. Plaintiff is a resident of the State of New Jersey. Defendant J. Richmond Ritenour is a resident of the State of Connecticut; defendant John J. Lipsky is a resident of the State of California; and defendants Miriam and Sidney Pepper are residents of the State of New York. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

FIRST CLAIM, ALLEGED AGAINST ALL
DEFENDANTS

2. On August 24, 1964, Frank H. Arlinghaus, plaintiff's husband, died in Monmouth County, New Jersey, leaving a Last Will and Testament, which was admitted to probate on September 14, 1964, by the Surrogate's Court of Monmouth County, New Jersey; letters testamentary thereof were issued by that court to plaintiff on September 14, 1964; and plaintiff thereupon qualified as executrix

of said will.

3. At all times hereinafter mentioned, defendant Ritenour was the president and a director and defendant Lipsky was the executive vice-president and a director of Modern Teleservice, Inc. ("Teleservice"), a New York corporation; defendant Sidney Pepper was general counsel to Teleservice and was the attorney for plaintiff individually and as executrix of the will of Frank H. Arlinghaus; and defendant Miriam Pepper was the wife of defendant Sidney Pepper.

4. In May of 1967, plaintiff Arlinghaus owned 4,000 and the estate of Frank H. Arlinghaus ("the estate") owned 20,360 of the 58,800 shares of common stock of Teleservice issued and outstanding.

5. On or about May 12, 1967, defendants Ritenour and Lipsky demanded that plaintiff convey to them the shares of Teleservice common stock owned by her and the estate and threatened that, unless she should do so, they would resign as officers of Teleservice; and defendant Pepper represented to plaintiff that the ability of Teleservice to continue to do business would be seriously impaired by such resignations and that plaintiff had no choice but to comply with the demand, and he advised her to do so.

6. On or about May 12, 1967, plaintiff entered into an agreement for the sale of the Teleservice common stock owned by her and by the estate to defendants Ritenour and Lipsky at the price of \$20 per share; and, when defendants Ritenour and Lipsky defaulted on the payment of the purchase price, plaintiff, on or about June 30, 1967,

entered into a modified agreement for the sale to defendants Ritenour, Lipsky and Sidney Pepper or his designee of the 4,000 shares of Teleservice common stock owned by her and 9,104 shares of the Teleservice common stock owned by the estate for \$131,040, to be paid \$39,312 in cash and \$91,728 in promissory notes, with the right reserved to plaintiff to repurchase the shares unless prior to July 1, 1968 she should receive \$336,160 for the remaining 11,256 shares of Teleservice common stock owned by the estate and \$56,000 for 2,800 shares of such stock owned by her three children.

7. On or about August 3, 1967, plaintiff, pursuant to the agreement of June 30, 1967, conveyed to defendants Ritenour, Lipsky and Miriam Popper, defendant Sidney Pepper's designee, 4,000 shares of Teleservice common stock owned by her and 9,104 shares of Teleservice common stock owned by the estate, and defendants Ritenour, Lipsky and Miriam Popper paid to plaintiff and the estate \$39,312 and delivered to her their promissory notes for \$91,728.

8. Plaintiff would not have entered into the agreements of May 12, 1967 and June 30, 1967, described in paragraph 6, above, and would not have made the sale of Teleservice common stock described in paragraph 7, above, but for the demand, threats, representations and advice by defendants Ritenour, Lipsky and Sidney Pepper described in paragraph 5, above.

9. On April 8, 1968, Teleservice sold all of its assets and business to Sonderling Broadcasting Corporation for 130,000 shares of Sonderling Broadcasting

Corporation capital stock, and on the same day Teleservice was dissolved and liquidated by its board of directors and stockholders, and the 130,000 shares of Sonderling Broadcasting Corporation capital stock received by Teleservice for its assets and business were distributed to the stockholders of Teleservice in liquidation.

10. In the liquidation of Teleservice, defendants Ritenour, Lipsky and Miriam Pepper received approximately 26,208 shares of Sonderling Broadcasting Corporation capital stock in exchange for the Teleservice common stock conveyed to them by plaintiff.

11. The fair market value of the shares of Sonderling Broadcasting Corporation capital stock received by defendants Ritenour, Lipsky and Miriam Pepper in exchange for the Teleservice common stock conveyed to them by plaintiff is at least \$939,696.

12. Plaintiff has no adequate remedy at law.

SECOND CLAIM, ALLEGED AGAINST DEFENDANTS RITENOUR AND LIPSKY

13. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 7, 9, 10 and 11 of this complaint with the same force and effect as if here fully set forth.

14. At various times before the sale of Teleservice common stock by plaintiff to defendants, the officers and directors of Teleservice had received offers and proposals from individuals and corporations willing and able to purchase the assets and business or stock of Teleservice and to pay the full value thereof.

15. The facts alleged in the preceding paragraph were well known to defendants Ritenour, Lipsky

and Sidney Pepper, but they deliberately and maliciously concealed those facts from plaintiff.

16. In concealing those facts from plaintiff, defendants Ritenour and Lipsky violated the obligation of full disclosure and good faith owed by them as officers and directors of Teleservice to plaintiff.

17. If plaintiff had been apprised of those facts, she would not have entered into the agreements of May 12 and June 30, 1967, described in paragraph 6, above, and would not have made the conveyance of Teleservice common stock described in paragraph 7, above.

18. Plaintiff has no adequate remedy at law.

THIRD CLAIM, ALLEGED AGAINST DEFENDANTS SIDNEY PEPPER AND MIRIAM RITENOUR

19. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 7 and 9, 10, 11, 14, 15 and 17 of this complaint with the same force and effect as if here fully set forth.

20. In making the representation and giving the advice alleged in paragraph 5, above, and concealing facts as alleged in paragraph 15, above, defendant Sidney Pepper violated professional obligations of honesty, integrity, fair dealing and diligence owed by him to plaintiff.

21. Plaintiff has no adequate remedy at law.

FOURTH CLAIM, ALLEGED AGAINST ALL DEFENDANTS

22. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 11, 14 through 17 and 20 of this complaint with the same force and effect as if here fully set forth.

23. At some time prior to May 12, 1967, defendants maliciously conspired together and entered into a scheme to exert duress and undue influence on plaintiff and defraud and deceive her for the purpose of obtaining from her all or some of the Teleservice stock owned by her and the estate for a consideration far below the fair value thereof.

24. In pursuance of the conspiracy and scheme alleged in the preceding paragraph, defendants made the demand, threats and representation and gave the advice alleged in paragraph 5, above, withheld information as alleged in paragraph 15, above, entered into the agreements described in paragraph 6, above, and took title to Teleservice stock pursuant to the agreement of June 30, 1957, as alleged in paragraph 7, above, and all such acts were participated in and done by all of the defendants or by one or more of them as steps in said conspiracy and scheme.

25. Plaintiff has no adequate remedy at law.

FIFTH CLAIM, ALLEGED AGAINST
ALL DEFENDANTS

26. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 11, 14 through 17, and 20, 23 and 24 of this complaint with the same force and effect as if here fully set forth.

27. This claim arises under Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b). Jurisdiction of this claim is conferred upon this Court by Section 27 of that Act, 15 U.S.C. § 72a(a).

28. In making the demand, threat and misrepresentation and giving the advice alleged in paragraph 5,

above, failing to disclose facts, as alleged in paragraph 15, above, and entering into and acting pursuant to a conspiracy as alleged in paragraphs 23 and 24, above, defendants made use of means and instrumentalities of interstate commerce and the mails and thereby violated Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b) and Rule 10b-5 of the General Rules and Regulations issued thereunder by the Securities and Exchange Commission, to the damage of plaintiff and the estate.

29. Plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff demands judgment in favor of plaintiff individually and as executrix of the Last Will and Testament of Frank H. Arlinghaus:

- (1) against all defendants on the first, fourth and fifth claims:
 - (a) rescinding the agreement of June 30, 1937, and the sale of Teleservice common stock made pursuant thereto, declaring that defendants hold as constructive trustees for plaintiff's benefit the shares of Sonderling Broadcasting Corporation capital stock received by them in exchange for the Teleservice common stock conveyed to them by plaintiff, and directing them to deliver such Sonderling Broadcasting Corporation capital stock to plaintiff; or, in the alternative, for \$256,000 compensatory damages in favor of plaintiff individually and \$582,656 compensatory damages in favor of plaintiff as executrix of the Last Will and Testament of Frank H. Arlinghaus, with

interest from June 30, 1967; and

(b) for \$256,000 punitive damages in favor of plaintiff individually and \$582,656 punitive damages in favor of plaintiff as executrix of the Last Will and Testament of Frank H. Arlinghaus;

(2) against defendants Ritonour and Lipsky on the second claim:

(a) rescinding as to them the agreement of June 30, 1957, and the sale of Teleservice common stock made to them pursuant thereto, declaring that they hold as constructive trustees for plaintiff's benefit the shares of Sonderling Broadcasting Corporation capital stock received by them in exchange for the Teleservice common stock conveyed to them by plaintiff, and directing them to deliver such Sonderling Broadcasting Corporation capital stock to plaintiff; or, in the alternative, for compensatory damages in the amount of the value of such stock, with interest from June 30, 1957; and

(b) for punitive damages in that amount;

(3) against defendants Sidney and Miriam Pepper on the third claim:

(a) rescinding as to them the agreement of June 30, 1957, and the sale of Teleservice common stock made to them pursuant thereto, declaring that they hold as constructive trustees

for plaintiff's benefit the shares of Sonderling Broadcasting Corporation capital stock received by them in exchange for the Teleservice common stock conveyed to them by plaintiff, and directing them to deliver such Sonderling Broadcasting Corporation capital stock to plaintiff; or, in the alternative, for compensatory damages in the amount of the value of such stock, with interest from June 30, 1967; and

(b) for punitive damages in that amount; and

(5) awarding to plaintiff her costs and disbursements of this action.

Dated: August 28, 1968.

CASEY, LIND & MCNAUL LTD

By /s/ William E. Kelly
A Member of the Firm

Attorneys for Plaintiff
Office and P. O. Address
26 Broadway
New York, New York 10004
WM 3-3000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

ROSLIE M. ARLINGHAUS, Executrix	:	
of the Will of Frank H. Arlinghaus,	:	
and ROSALIE M. ARLINGHAUS,	:	68 Civ. 3537
individually,	:	
Plaintiffs,	:	ANSWER OF
-against-	:	DEFENDANTS
J. RICHMOND RITENOUR, JOHN J.	:	RITENOUR AND
LIPSKY, MIRIAM PEPPER AND SIDNEY	:	LIPSKY
PEPPER,	:	
Defendants.	:	

-----x

Defendants, J. Richmond Ritenour and John J.
Lipsky, for their Answer to the Complaint:

AS TO THE FIRST CLAIM

1. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation of Paragraphs 1 and 2 of the Complaint except to admit that plaintiff is a resident of New Jersey; defendant Ritenour is a resident of Connecticut; defendant Lipsky is a resident of California; and plaintiff purports to be her deceased husband's executrix.

2. Deny knowledge or information sufficient to form a belief as to the truth of so much of Paragraph 3 of the Complaint as alleges that defendant Sidney Pepper was the attorney for plaintiff individually and as executrix

of the Will of Frank H. Arlinghaus.

3. Deny each and every allegation of Paragraph 5 of the Complaint except to deny knowledge or information sufficient to form a belief as to any representations allegedly made to plaintiff by defendant Sidney Pepper.

4. Deny each and every allegation of Paragraph 6 of the Complaint.

5. Deny, in respect of each and every allegation of Paragraph 7 of the Complaint, that said allegations fully, fairly and accurately reflect the terms and conditions of the agreement of June 30, 1967 or of the parties' performance thereunder and refer to such agreement for the true scope and intendment thereof.

6. Deny each and every allegation of Paragraphs 8, 9, 10, 11 and 12 of the Complaint.

AS TO THE SECOND CLAIM

7. Repeat and reallege, as to the allegations included by reference in Paragraph 13 of the Complaint, the same responses heretofore made as if fully set forth again.

8. Deny each and every allegation of Paragraphs 14 through 18, inclusive, of the Complaint.

AS TO THE FOURTH CLAIM

9. Repeat and reallege, as to the allegations included by reference in Paragraph 22 of the Complaint, the same responses heretofore made as if fully set forth again.

10. Deny each and every allegation of Paragraphs 23 through 25, inclusive, of the Complaint.

AS TO THE FIFTH CLAIM

11. Repeat and reallege, as to the allegations included by reference in Paragraph 26 of the Complaint, the same responses heretofore made as if fully set forth again.

12. Deny each and every allegation of Paragraph 27 of the Complaint except to admit this Court's jurisdiction over such claim, if any, proceeds from Section 27 of the Securities Exchange Act of 1934, as amended.

13. Deny each and every allegation of Paragraphs 28 and 29 of the Complaint.

AS AN AFFIRMATIVE DEFENSE TO
THE FIRST CLAIM, THESE
DEFENDANTS ALLEGE:

14. Plaintiff, with full knowledge of all facts alleged in her complaint, made no election to rescind the transactions complained of or to tender to these defendants the proceeds therefrom received and held by her.

AS AN AFFIRMATIVE DEFENSE TO
ALL CLAIMS AGAINST THESE
DEFENDANTS, SAID DEFENDANTS
ALLEGE:

15. At all times relevant, plaintiff well knew or had ready means by which to know, all material matters concerning the business affairs of Modern Teleservice, Inc.

and of opportunities to sell holdings therein.

16. Plaintiff thereupon acquiesced, affirmed and ratified all actions taken by these defendants or either of them in connection with the transactions referred to in the complaint and has received and retained the full benefits thereof.

AS A SECOND AFFIRMATIVE
DEFENSE TO ALL CLAIMS,
THESE DEFENDANTS ALLEGE:

17. Plaintiff, with full knowledge of all facts alleged in her complaint, released and has forever discharged these defendants of and from all liability to her as alleged therein or otherwise.

WHEREFORE, defendants J. Richmond Ritenour and John J. Lipsky demand judgment dismissing the Complaint herein as to each of them together with their respective costs and disbursements and such other and further relief as the Court may deem warranted.

Dated: New York, New York
October 15, 1968

ROGERS HOGE & HILLS

By

S. P. Horwitz Jr.
A Member of the Firm
Attorneys for Defendants
Ritenour and Lipsky
90 Park Avenue
New York, New York 10016
MU 7-2120

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROSLIE M. ARLINGHAUS, Executrix of :
the Will of Frank H. Arlinghaus,
and ROSALIE M. ARLINGHAUS,
individually,

Plaintiff, : CIVIL ACTION FILE
NO. 3537

-against-

J. RICHMOND RITENOUR, JOHN J.
LIPSKY, MIRIAM PEPPER and SIDNEY
PEPPER,

: ANSWER OF DEFENDANT
SIDNEY PEPPER

Defendants.

Defendant Sidney Pepper by his attorneys, Dugan &
Rosen, for his answer herein:

1. Admits each and every allegation contained
in the paragraphs of the complaint designated 1, 2, 3 and 4.

2. Denies each and every allegation contained in
the paragraphs of the complaint designated 5, 6, 8, 11, 12,
14, 15, 16, 17, 18, 20, 21, 23, 24, 25, 27, 28 and 29.

3. Admits that on or about August 3, 1967,
plaintiff acting respectively as an individual and as
executrix, sold to each of defendants Ritenour and Lipsky
1,500 and 3,415 shares of Modern Teleservice, Inc. stock and
to defendant Miriam Pepper 1,000 and 2,276 shares of Modern
Teleservice, Inc. stock for \$10.00 a share of which \$3.00 was
paid in cash and the balance by promissory notes of the
respective purchasers, and that defendant Ritenour agreed
to cause all of such shares so sold to be made available
for repurchase by plaintiff under certain conditions and,
except as herein specifically admitted, denies each and
every allegation contained in the paragraph of the complaint
designated 7.

4. Admits that Modern Teleservice, Inc. exchanged
substantially all of its properties for 130,000 shares of

the capital stock of Sonderling Broadcasting Corporation and that plaintiff executrix received 22,971 shares of Sonderling Broadcasting Corporation stock in exchange for her Modern Teleservice, Inc. stock and, except as herein specifically admitted, denies each and every allegation contained in the paragraph of the complaint designated 9.

5. Admits that defendant Ritenour received a total of 20,457 shares, defendant Lipsky a total of 18,742 shares and defendant Miriam Pepper a total of 9,828 shares in exchange for their respective holdings of Modern Teleservice, Inc. shares and, except as herein specifically admitted, denies each and every allegation contained in the paragraph of the complaint designated 10.

6. Except as hereinbefore admitted, denies each and every allegation repeated and realleged in the paragraphs of the complaint designated 13, 19, 22 and 26.

FURTHER ANSWERING THE COMPLAINT HERIN AND AS A COMPLETE DEFENSE THERETO THIS DEFENDANT ALLEGES:

7. Heretofore and on June 7, 1968 plaintiffs, for valuable consideration, duly executed and delivered to this defendant an instrument, a copy of which marked Exhibit A, is annexed hereto and made a part hereof, wherein and whereby plaintiffs and this defendant agreed to exchange general releases upon the receipt by this defendant of the \$75,000.00 irrevocably assigned to him as provided in the said exhibit.

8. The parties to the said agreement of June 7, 1968 have, as provided therein, sold the corporate stock referred to in paragraph 7 of the said agreement and have been respectively paid all of the monies due them by reason of such sale.

9. This defendant has duly and fully complied

with all of the conditions of the said agreement of June 7, 1968 to be complied with by him.

10. The said \$75,000.00 irrevocably assigned to this defendant as provided in the said agreement of June 7, 1968 has not been paid to this defendant as provided therein, because plaintiffs have purported to revoke the irrevocable assignment therein to this defendant in violation of the provisions of the said agreement.

11. The said agreement of June 7, 1968 constitutes an executory accord within the provisions of the New York General Obligations Law, Section 15-501.

12. Under and by the said executory accord plaintiffs have released and forever discharged this defendant from any and all claims and from any and every liability arising from any cause of action pleaded by them herein.

WHEREFORE, this defendant demands judgment dismissing the complaint herein, together with the costs and disbursements of this action.

DUGAN & ROSEN, ESQS.,

BY _____

Jack A. Rosen
A member of the firm
Attorneys for defendant
Sidney Pepper,
Office and P.O. Address
25 West 43rd Street,
New York, New York.
564-6320

EXHIBIT "A"MEMORANDUM

Memorandum of Agreement made this 7th day of June, 1958, in the City of New York, by and between Sidney Pepper, an Attorney practicing law under the name of De Witt, Pepper & Howell, in the City of New York, hereinafter called "Pepper" and all of the parties who have hereunto subscribed their names at the end of this instrument, (being the owners of approximately 86% of the outstanding stock of Modern Talking Picture Service, Inc.) hereinafter jointly called the "Stockholders".

WITNESSETH

Whereas, Pepper has heretofore performed numerous and varied legal services for the Corporation and the Stockholders consisting of negotiations, agreements, meetings, etc., with the view towards selling either the assets or the stock of the Corporation; and

Whereas, Pepper is presently holding certain Stock Certificates, books, records and papers belonging to some of the Stockholders and to the Corporation; and

Whereas, the parties hereto desire to settle their differences and enter this agreement;

Now, Therefore, in consideration of the mutual covenants herein contained, it is agreed as follows:

1. That heretofore Pepper has claimed approximately \$116,000 in legal fees and disbursements against the Stockholders and the Corporation for which he has impressed a lien.

2. The Stockholders and the corporation have heretofore denied the validity of the said Pepper claim and lien.

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3. There is a proceeding now pending in the Supreme Court, New York County under Index #8982/68 to require the said Pepper to deliver up the said Stock Certificates, books and papers upon which he has claimed a lien and the parties hereto now desire to adjust their differences.

4. Accordingly, the parties hereto agree that those shall be paid to Pepper, in full satisfaction of all claims for services rendered to the Stockholders and the Corporation, the sum of \$75,000. The said sum is to be paid by the Stockholders ^{only} to Sidney Pepper pursuant to the executed assignment attached hereto and made a part hereof.

5. Upon receipt of the said \$75,000, Pepper shall have no further claim of any kind or type against any of the Stockholders or the Corporation and the Stockholders on one hand and Pepper on the other hand shall forthwith exchange general releases, releasing each other, *

6. The Stockholders also warrant and represent that they are executing this agreement and the assignment of the \$75,000 of proceeds of their own free will in the presence of each other and ~~electheix~~ Attorney, William E. Kelly, Esq., who is present at the execution of this agreement.

7. In the event the Sherman Unger Group do not purchase the corporate stock of the Stockholders on or before June 24, 1968, then it is hereby agreed that the Stockholders and the Corporation, individually and jointly shall restore said Pepper to the same position he held prior thereto and shall cause themselves and the Corporation to return the stock and papers which he has this date delivered to them, so as to reinstate his lien.

* except for John J. Lipinsky and any collateral security for any notes except for any promissory notes executed by Marion J. Pepper, d.b.a. In addition, Pepper agrees to execute and deliver a general release to Modern Talking Picture Service, Inc.

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In Witness Whereof, the parties have executed this agreement
this 7th day of June, 1968

Sidney Peppen
Sidney Pepper

MODERN TALKING PICTURE SERVICE, INC.

By [Signature]

Stockholders

<u>Rosario Masin Schlesinger</u>	<u>Perle O. Brogle</u>
<u>Harry W. Bergman Jr.</u>	<u>Richard M. Haughey</u>
<u>Wm. H. Blackallum</u>	<u>Pauline DeCosta</u>
<u>Alexander Blackallum</u>	
<u>Evan W. Cox</u>	
<u>Rosalie M. Arlinghaus</u>	<u>Alix Ann Arlinghaus</u>

Rosalie M. Arlinghaus, Individually,
as Executrix under Will of Fred M.
Arlinghaus and as Custodian for
each and all of her children

Alix Ann Arlinghaus

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Dated: June 7, 1968

We, the undersigned, hereby irrevocably convey, transfer and assign unto Sidney Pepper, His heirs, assigns and representatives, in the funds due and payable to us on the sale of our stock in Modern Talking Pictures Service, Inc., the sums of money set opposite our signatures, and we do hereby direct the Purchasers of the said stock, to pay the said sums assigned to Sidney Pepper to his attorney, Jack A. Rosen, as attorney for said Pepper, out of the first monies due to us on the said sale of our stock. We also direct that the said sums due to Pepper shall be paid simultaneously with the balance of the purchase price of the stock being paid to us. The purchasers referred to are the

Sherman Unger Group.

<u>Rosalie H. Arlinghaus</u>	\$ 37,842.17
As Executrix of the Estate of Frank H. Arlinghaus	
<u>Rosalie H. Arlinghaus</u>	\$ 3,236.74
Individually	
<u>Rosalie H. Arlinghaus</u>	\$ 2,543.16
As Custodian for Frank Arlinghaus, Jr.	
<u>Rosalie H. Arlinghaus</u>	\$ 2,543.16
As custodian for John C. Arlinghaus	
<u>Wm. H. Mac Callum</u>	\$ 11,236.13
Wm. H. Mac Callum	
<u>Alexandra Mac Callum</u>	\$ 1,258.46
Alexandra Mac Callum	
<u>Anna Marie Schlerath</u>	\$ 8,114.98
Anna Marie Schlerath	
<u>Harry W. Bognards Jr.</u>	\$ 4,369.61
Harry W. Bognards Jr.	
<u>Elsie W. Cox</u>	\$ 554.87
Elsie W. Cox	
<u>Richard M. Hough</u>	\$ 462.39
Richard M. Hough	
<u>Ralph Del Coro</u>	\$ 231.19
Ralph Del Coro	
<u>Bertha A. Doglie</u>	\$ 73.98
Bertha A. Doglie	
TOTAL	\$ XXXXXXXXXX
	\$ 2,343.16
	\$ 75,000.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROSALE M. ARLINGHAUS, Executrix of :
the Will of Frank H. Arlinghaus,
and ROSALIE M. ARLINGHAUS,
individually, : CIVIL ACTION FILE
Plaintiffs, : NO. 3537
-against- : ANSWER OF DEFENDANT
J. RICHMOND RITENOUR, JOHN J.
LIPSKY, MIRIAM PEPPER and SIDNEY
PEPPER, :
Defendants.

Defendant Miriam Pepper by her attorneys, Dugan
& Rosen, for her answer herein:

1. Admits each and every allegation contained
in the paragraphs of the complaint designated 1, 2, 3 and 4.

2. Denies each and every allegation contained
in the paragraphs of the complaint designated 5, 6, 8, 11,
12, 14, 15, 16, 17, 18, 20, 21, 23, 24, 25, 27, 28 and 29.

3. Admits that on or about August 3, 1967 ,
plaintiff acting respectively as an individual and as execu-
trix, sold to defendants Ritenour and Lipsky each 1,500 and
3,415 shares of Modern Teleservice, Inc. stock and to
defendant Miriam Pepper 1,000 and 2,276 shares of Modern
Teleservice, Inc. stock for \$10.00 a share of which \$3.00
was paid in cash and the balance by promissory notes of
the respective purchasers, and that defendant Ritenour
agreed to cause all of such shares so sold to be made
available for repurchase by plaintiffs under certain con-
ditions and, except as herein specifically admitted, denies
each and every allegation contained in the paragraph of the
complaint designated 7.

4. Admits that Modern Teleservice, Inc. exchanged
substantially all of its properties for 130,000 shares of
the capital stock of Sonderling Broadcasting Corporation
and that plaintiff executrix received 22,971 shares of

Sonderling Broadcasting Corporation stock in exchange for her Modern Teleservice, Inc. stock and, except as herein specifically admitted, denies each and every allegation contained in the paragraph of the complaint designated 9.

5. Admits that defendant Ritenour received a total of 20,457 shares, defendant Lipsky a total of 18,742 shares and defendant Miriam Pepper a total of 9,828 shares in exchange for their respective holdings of Modern Teleservice, Inc. shares and, except as herein specifically admitted, denies each and every allegation contained in the paragraph of the complaint designated 10.

6. Except as hereinbefore admitted, denies each and every allegation repeated and resleged in the paragraphs of the complaint designated 13, 19, 22 and 26.

FURTHER ANSWERING THE COMPLAINT HEREIN AND AS A COMPLETE DEFENSE THERETO THIS DEFENDANT ALLEGES:

7. Heretofore and on June 7, 1968 plaintiffs, for valuable consideration, duly executed and delivered to defendant Sidney Pepper an instrument, a copy of which marked Exhibit A, is annexed hereto and made a part hereof, wherein and whereby plaintiffs and defendant Sidney Pepper agreed to exchange general releases upon the receipt by defendant Sidney Pepper of the \$75,000.00 irrevocably assigned to him as provided in the said exhibit.

8. The parties to the said agreement of June 7, 1968 have, as provided therein, sold the corporate stock referred to in paragraph 7 of the said agreement and have been respectively paid all of the monies due them by reason of such sale.

9. Defendant Sidney Pepper has duly and fully complied with all of the conditions of the said agreement of June 7, 1968 to be complied with by him.

10. The said \$75,000.00 irrevocably assigned to defendant Sidney Pepper as provided in the said agreement of June 7, 1968 has not been paid to defendant Sidney Pepper

as provided therein, because plaintiffs have purported to revoke the irrevocable assignment therein to defendant Sidney Pepper in violation of the provisions of the said agreement.

11. The said agreement of June 7, 1968 constitutes an executory accord within the provisions of the New York General Obligations Law, Section 15-501.

12. Under and by the said executory accord plaintiffs have released and forever discharged defendant Sidney Pepper from any and all claims and from any and every liability arising from any cause of action pleaded by them herein and have thereby likewise discharged this defendant from any and every liability arising from any cause of action pleaded by them herein.

WHEREFORE, this defendant demands judgment dismissing the complaint herein, together with the costs and disbursements of this action.

DUGAN & ROSEN, ESQ'S.,

BY _____
Jack A. Rosen
A member of the firm
Attorneys for defendant
Miriam Pepper,
Office and P.O. Address
25 West 43rd Street,
New York, New York.
564-6320

MEMORANDUM

Memorandum of Agreement made this 7th day of June, 1958, in the City of New York, by and between Sidney Pepper, an Attorney practicing law under the name of De Witt, Pepper & Howell, in the City of New York, hereinafter called "Pepper" and all of the parties who have hereunto subscribed their names at the end of this instrument, (being the owners of approximately 86% of the outstanding stock of Modern Talking Picture Service, Inc.) hereinafter jointly called the "Stockholders".

WITNESSETH

Whereas, Pepper has heretofore performed numerous and varied legal services for the Corporation and the Stockholders consisting of negotiations, agreements, meetings, etc., with the view towards selling either the assets or the stock of the Corporation; and

Whereas, Pepper is presently holding certain Stock Certificates, books, records and papers belonging to some of the Stockholders and to the Corporation; and

Whereas, the parties hereto desire to settle their differences and enter this agreement;

Now, Therefore, in consideration of the mutual covenants herein contained, it is agreed as follows:

1. That heretofore Pepper has claimed approximately \$116,000 in legal fees and disbursements against the Stockholders and the Corporation for which he has impressed a lien.

2. The Stockholders and the corporation have heretofore denied the validity of the said Pepper claim and lien.

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3. There is a proceeding now pending in the Supreme Court, New York County under Index #8982/68 to require the said Pepper to deliver up the said Stock Certificates, books and papers upon which he has claimed a lien and the parties hereto now desire to adjust their differences.

4. Accordingly, the parties hereto agree that there shall be paid to Pepper, in full satisfaction of all claims for services rendered to the Stockholders and the Corporation, the sum of \$75,000. The said sum is to be paid by the Stockholders to Sidney Pepper ^{only} pursuant to the executed assignment attached hereto and made a part hereof.

5. Upon receipt of the said \$75,000, Pepper shall have no further claim of any kind or type against any of the Stockholders or the Corporation and the Stockholders on one hand and Pepper on the other hand shall forthwith exchange general releases, releasing each other, *

6. The Stockholders also warrant and represent that they are executing this agreement and the assignment of the \$75,000 of proceeds of their own free will in the presence of each other and ~~both~~ their Attorney, William E. Kelly, Esq., who is present at the execution of this agreement.

7. In the event the Sherman Unger Group do not purchase the corporate stock of the Stockholders on or before June 24, 1968, then it is hereby agreed that the Stockholders and the Corporation, individually and jointly shall restore said Pepper to the same position he held prior thereto and shall cause themselves and the Corporation to return the stock and papers which he has this date delivered to them, so as to reinstate his lien.

* except for John J. Lipsky and any collateral security for said notes
except for any promissory notes executed by Marisa J. Pepper, d.b.a. in
addition, Pepper agrees to execute and deliver a general release to
Modern Talking Picture Service, Inc.

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In Witness Whereof, the parties have executed this agreement
this 7th day of June, 1968

Sidney Pepper
Sidney Pepper.

MODERN TALKING PICTURE SERVICE, INC.

By

Stockholders

Rosalia Arlinghaus Brooke D. Boyle
Harry W. Arlinghaus Richard L. Hough
Wm. H. MacCallum James DeLoach
Alexandria MacCallum
Evan W. Cole
Rosalie M. Arlinghaus Alix Ann Arlinghaus

Rosalie M. Arlinghaus, Individually,
as Executrix under Will of Frank H.
Arlinghaus and as Custodian for
each and all of her children

Alix Ann Arlinghaus

Dated: June 7, 1968

We, the undersigned, hereby irrevocably convey, transfer and assign unto Sidney Pepper, His Heirs, assigns and representatives, from the funds due and payable to us on the sale of our stock in Modern Talking Pictures Service, Inc., the sums of money set opposite our signatures, and we do hereby direct the Purchasers of the said stock, to pay the said sums assigned to Sidney Pepper to his attorney, Jack A. Rosen, as attorney for said Pepper, out of the first monies due to us on the said sale of our stock. We also direct that the said sums due to Pepper shall be paid simultaneously with the balance of the purchase price of the stock being paid to us. The purchasers referred to are the Sherman Unger Group.

<u>Rosalie M. Arlinghaus</u> As Executrix of the Estate of Frank H. Arlinghaus	\$ 37,842.17
<u>Rosalie M. Arlinghaus</u> Individually	\$ 3,236.74
<u>Rosalie M. Arlinghaus</u> As Custodian for Frank Arlinghaus, Jr.	\$ 2,543.16
<u>Rosalie M. Arlinghaus</u> As custodian for John C. Arlinghaus	\$ 2,543.16
<u>Wm H Mac Callum</u> Wm. H. Mac Callum	\$ 11,236.13
<u>Alexandria Mac Callum</u> Alexandra Mac Callum	\$ 1,268.46
<u>Anna Marie Schlereth</u> Anna Marie Schlereth,	\$ 8,114.98
<u>Harry W. Bognards Jr.</u> Harry W. Bognards Jr.	\$ 4,389.61
<u>Elsie W. Cox</u> Elsie W. Cox	\$ 554.87
<u>Richard M. Hough</u> Richard M. Hough	\$ 462.39
<u>Ralph Del Coro</u> Ralph Del Coro	\$ 231.19
<u>Bertha A. Boggie</u> Bertha A. Boggie	\$ 73.98
TOTAL	\$ XXXXX X XXXX XXXXXXXXXX
<u>Rosalie M. Arlinghaus</u> As Custodian for Alix Ann Arlinghaus	\$ 2,543.16
TOTAL	\$ 75,000.

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\$25,000.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROSLIE M. ARLINGHAUS, Executrix
of the Will of Frank H. Arlinghaus,
and ROSALIE M. ARLINGHAUS,
individually,

plaintiffs,

- against -

J. RICHMOND RITENOUR, JOHN J.
LIPSKY, MIRIAM PEPPER and
SIDNEY PEPPER,

Defendants.

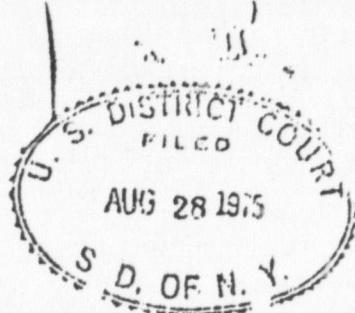
OPINION

68 Civ. 3537 (HFW)

#43010

HENRY F. WERKER, D. J.

This is an action for fraud, duress and breach of fiduciary duty in the defendants' purchase from plaintiff of stock in Modern Teleservice, Inc. (hereinafter "MTS"), a now-defunct closed corporation engaged in the distribution of television commercials. Plaintiff is a former physical therapist whose husband, Frank Arlinghaus, incorporated MTS in 1956, retaining a controlling share of the corporation's stock until his death in 1964. The stock at that time passed to plaintiff and to his estate, of which plaintiff was executrix. The defendants J. Richmond Ritenour and John J. Lipsky are former executive officers of MTS who, with Frank Arlinghaus, established and ran the corporation between 1956 and 1968. Defendant Sidney Pepper is the former legal counsel to MTS, as well as former counsel to plaintiff. Miriam Pepper is his wife.



The suit arises from plaintiff's sale of MTS stock to Messrs. Ritenour and Lipsky, and Mrs. Pepper in June of 1967. Approximately one year after this sale plaintiff instituted the present action for rescission, or in the alternative, for compensatory and punitive damages. She asserts a variety of claims against the defendants, over which this court has federal subject matter, diversity and pendent jurisdiction. 28 U.S.C. §§ 1331-1332; 15 U.S.C. § 78a(a). After trial without a jury the court has made the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. While MTS was in existence, J. Richmond Ritenour (hereinafter "Ritenour") served as President and Chief Executive Officer, John J. Lipsky (hereinafter "Lipsky"), as Vice President, Frank Arlinghaus as Chairman of the Board, and his brother, Clemens G. Arlinghaus (hereinafter "Clem") as a member of the board of directors. The New York law firm of Dewitt, Pepper & Howell, of which Sidney Pepper (hereinafter "Pepper") was a partner, both served on retainer as corporate counsel to MTS, and acted as attorney for Frank Arlinghaus, his wife, and his estate. Following Dewitt's death in 1965, Pepper was the only remaining resident partner of the firm.

2. Management and direction of the corporation were handled by Ritenour and Lipsky. As a result of their work with and for the corporation Frank Arlinghaus in 1960 offered to sell all its stock to them for \$275,000. They were

not able to obtain the necessary financing until 1961; by that time the asking price had increased beyond their resources. Ritenour and Lipsky were able, however, to purchase small lots of stock for approximately seven dollars a share.

3. When Frank Arlinghaus died his estate faced a large tax assessment with little in the way of cash available to pay it. In an attempt to lower the valuation placed on the estate's MTS stock, Pepper filed with the IRS an affidavit dated October 27, 1966 which stated in pertinent part:

The personal friendships of the president have been largely responsible for the retention of its [MTS's] business. The thought of what would happen if his services were no longer available to the corporation has troubled the estate The corporation has no contract for his services and cannot get one.

(Exhibit C). He suggested that an appropriate valuation would be \$3.75 a share. The IRS, however, valued the stock at \$9.53 a share.

4. In late 1967 plaintiff, her brother-in-law Clem, and Pepper had several meetings in which they considered whether to sell all or part of the estate's stock holdings in order to meet the IRS assessment. Under a voting trust agreement executed by all the shareholders in 1956, as amended in 1959, 1962 and 1966, the estate could require MTS to buy back the stock at a formula price per share. Plaintiff, Clem and Pepper agreed at the first meeting that if the formula price were \$20 or more, it "might be desirable" to put the stock to the corporation (Tr. 42). The formula price, however,

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was later determined to be only \$10 a share.

5. At a board of directors meeting in 1966 the company authorized Ritenour and Lipsky to look for a merger partner or purchaser for MTS. At approximately the same time these two officers realized that the Arlinghaus estate would not put its stock to the corporation and thereby make it available for them to purchase. Because they still wanted to increase their equity in MTS, they sought to arrange an MTS purchase or merger that would satisfy both their desire and that of the corporation. Several exploratory meetings were held with brokers. Ritenour routinely reported the fact and results of such meetings to the board of directors and to Pepper, as counsel to the corporation and to the corporation's majority stockholder.

6. By April 1967 Ritenour and Lipsky had produced a syndicate of investors willing to finance their acquisition of all MTS stock at \$15 a share with the understanding that a Delaware corporation would then be formed to merge with MTS. Ritenour and Lipsky were to receive 25% of the stock of the post-merger company, as well as a brokerage fee for obtaining MTS for the syndicate.

7. On April 25, 1967 Ritenour and Lipsky drafted an offer to all MTS shareholders to purchase their stock at \$15 a share. No mention was made of the syndicate in the letter. Before the letter was sent out the offer was discussed with Pepper, who reviewed and approved its wording.

Pepper, therefore, knew of the syndicate, although he may not have known all the details of the brokerage arrangement. Indeed, he hoped to receive an agent's fee from the parties for effecting the transaction (Tr. 152).

8. After reviewing the offer language, Pepper asked Ritenour and Lipsky if he could improve the chances of completing the purchase by threatening the stockholders with their resignation should the offer not be accepted. Ritenour and Lipsky emphatically rejected this suggestion. They did subsequently hear, however, that such rumors were circulating.

9. After the offer had been received by the stockholders Pepper told plaintiff numerous times that Ritenour and Lipsky had threatened that if she did not sell to them they would resign. Pepper suggested to plaintiff that if they did so, they would take the corporate accounts, leaving her and the corporation with nothing but "wallpaper and film-winding machines." (Tr. 230). He did not tell her of the syndicate, although in speaking with Clem he stated that Ritenour and Lipsky were serious in their desire to purchase and had "adequate backing" to do so (Tr. 49). On May 10, 1967 plaintiff, Pepper, Clem, Ritenour and Lipsky met over lunch at the Rockefeller Center Rainbow Room to discuss the offer. The testimony differs as to what, if anything, was said with regard to resignation. Plaintiff testified that nothing was said at this luncheon to dispel the threat of resignation conveyed to her by Pepper, but admits that she

did not specifically ask the two officers about it. Ritenour and Lipsky testified that Ritenour denied rumors to that effect to plaintiff's face. Pepper recalled no talk of resignation. Clem testified that the two men repeated their threat; in light of plaintiff's testimony that neither Ritenour nor Lipsky ever personally told her they would resign, Clem's account of the luncheon conversation is not credible.

Having had the opportunity to observe all the witnesses on the stand, the court finds Ritenour's account of the discussion to be the most credible. His account, furthermore, is not necessarily inconsistent with that of plaintiff. All witnesses agree that the thrust of the conversation was Ritenour and Lipsky's eagerness to acquire MTS. Because of Pepper's prior comments, plaintiff may have taken their eagerness to combine MTS business control and ownership as an indication that they would seek such a combination elsewhere if necessary. Plaintiff, in any case, failed to question them on this point or seek clarification of what Pepper had told her.

10. Following the luncheon plaintiff, Clem and Pepper conferred and decided to propose a \$20 a share counteroffer. In considering whether to sell, and at what price, plaintiff never investigated the net worth of the corporation nor sought an outside appraisal. Unsophisticated in stock transactions, she relied heavily on her attorney Pepper, and

to a lesser extent, on her brother-in-law Ciem.

Plaintiff has testified that she never would have agreed to the \$20 sale had she not been coerced by the threat of resignation. However, in light of her need to raise cash for the estate, and her earlier determination that a put at \$20 might be desirable, the court lends little credence to this assertion. Plaintiff also alleges that she was not told of the existence of the syndicate; and thought the sale one directly to Ritenour and Lipsky. Plaintiff's May 12, 1967 letter to Pepper, however, belies this allegation; it states in pertinent part: "I am willing to transfer to a purchaser or purchasers designated by them [Ritenour and Lipsky] . . . all the shares of stock . . ." (Exhibit 2).

Although the \$20 counter-offer proved agreeable to all concerned, and a closing was scheduled for June 9, 1967, the syndicate failed at the last minute to provide Ritenour and Lipsky with the necessary financing and the sale was never consummated.

11. Still determined to increase their holdings of MTS stock, Ritenour and Lipsky discussed with Pepper as attorney for the corporation and for plaintiff a plan whereby the two officers with their own money would purchase 30% of each shareholder's stock. Pepper requested that as part of the plan he be allowed to purchase stock as well. Although Ritenour and Lipsky were cool to the idea of Pepper buying into "their" company, they knew that the stockholders had

a right to sell anyone. They made it clear to Pepper that they intended to purchase 30% of the stock; what he arranged was his business. Pepper thereafter drafted a proposal for the stockholders' sale of 40% of their MTS holdings (30% to

Ritenour and Lipsky, 10% to Pepper's wife²) at \$10 a share, with the understanding that the corporate officers would attempt to effect a sale or merger of MTS within a year that would yield the stockholders an average price of at least \$20 a share for their entire original holdings³; failing such a sale, the stockholders would have the option of repurchasing their stock at the \$10 price.

12. Without consulting Clem, and in total reliance on Pepper, plaintiff agreed to the \$10 offer, her acceptance being conditioned on acceptance by the other shareholders as well. To make up the 40% she chose to pool all of her personal stockholdings with some of the estate's shares; the agreement of sale is evidenced by four letters dated June 30, 1967. Plaintiff alleges that she would not have entered into the sale but for the threat of Ritenour and Lipsky's resignations, which continued to be rumored to her by Pepper. Ritenour testified that at the time he felt these continuing rumors "had to come from Pepper." (Tr. 108). Neither he nor Lipsky, however, contacted plaintiff to set the record straight, or requested that Pepper do so.

13. In the fall of 1967 MTS and Fuqua Industries, Inc. entered into an agreement whereby Fuqua would acquire

all of the MTS assets in exchange for Fugua stock. Ritenour at the time calculated that the agreement was worth approximately \$3 million to MTS stockholders, or approximately \$55 a share. The exchange was predicated, however, on MTS showing a rate of earnings for 1967 that it did not achieve. The Fugua deal, as a result, was never consummated.

14. During negotiations with Fugua another corporation, Sonderling Broadcasting Corp., had expressed interest in MTS. When the Fugua contract failed, a similar agreement was executed through a broker with Sonderling. This sale closed on April 8, 1968; plaintiff received 29,971 shares of Sonderling stock, worth \$29.75 each for the account of her husband's estate.

15. On June 7, 1968 in connection with a similar sale of Modern Talking Picture Service, Inc., (hereinafter "MTPS") a MTS sister corporation in which plaintiff held shares and for which Pepper also acted as counsel, the shareholders and Pepper executed an agreement to exchange mutual releases. The defendants to this action asserted affirmative defenses based on this agreement, which was subsequently challenged as unenforceable by the MTPS stockholders in a federal district court case before the Honorable Marvin E. Frankel. At trial before this court the parties agreed to be bound by Judge Frankel's decision. That decision, which was issued August 6, 1975, voids the release agreement.

See First National Bank of Cincinnati v. Sidney Pepper, 68 Civ. 4570, S.D.N.Y.

CONCLUSIONS OF LAW

Plaintiff's complaint sets forth five claims which may be summarized as follows:

First Claim: Ritenour and Lipsky threatened her that they would resign unless she sold stock to them. Pepper aided them in that he repeated the threat to plaintiff, suggested that such resignation would seriously impair the corporation's business, advised her that she had no choice but to sell, and failed to tell her she had legal remedies against them.

Second Claim: Ritenour and Lipsky breached their fiduciary duties as controlling corporate officers in that when purchasing her stock they maliciously concealed from her the true value of MTS and the fact that lucrative offers had been made to purchase the company. This information was known to Pepper as well.

Third Claim: Pepper breached his fiduciary duty to plaintiff in giving her the counsel alleged in the First Claim and in concealing the information described in the Second Claim.

Fourth Claim: Ritenour, Lipsky and Pepper conspired to defraud plaintiff. Their acts as alleged in the first three claims constitute overt acts in furtherance of the conspiracy.

Fifth Claim: In doing the above-described acts the defendants violated § 10-b of the Securities Exchange Act of 1934.

1. As the court finds that Ritenour and Lipsky never threatened plaintiff with resignation, either directly or indirectly, they are not liable to plaintiff on her First Claim; they specifically instructed Pepper not to spread rumors of resignation, and more importantly, specifically denied the truth of such rumors to plaintiff's face. No more can be required of them. As the allegations of the First Claim against Pepper are reiterated in the Third Claim, they will be dealt with below.

2. Ritenour and Lipsky are not liable to plaintiff on her Second Claim because, as noted in the findings of fact, rather than conceal information on negotiations for the purchase of MTS, and the possible worth of the company to its shareholders, they made routine reports on such matters to Pepper, as attorney for the corporation, and as attorney for plaintiff. They had no duty to repeat to plaintiff information they could reasonably assume would be imparted to her by her attorney. Myzel v. Fields, 386 F.2d 718 (8th Cir. 1968). Pepper's knowledge was imputable to plaintiff, for knowledge of the value of the corporation was well within the scope of his agency. Furthermore, once the \$10 offer had been made, plaintiff was on notice that her attorney was also acting for a party on the other side of the transaction.

The rule of law is clear that where special facts warrant the inference, as here, that the principal knows that his agent is also acting for the party adversely interested in the transaction, and yet consents to

let him act as his agent, the principal is estopped from denying notice and knowledge which the agent had during the negotiation.

Mittendorf v. Williston & Beano, Inc., 372 F. Supp. 821, 829 (S.D.N.Y. 1974).

3. Pepper is liable to plaintiff for breach of fiduciary duty on both parts of her Third Claim. With respect to the first part Pepper's attorney argues that Pepper did nothing more than repeat the opinion that had been set forth in his affidavit to the IRS. (See page 3, supra). The court has found, however, that Pepper both knowingly and intentionally misrepresented Ritenour and Lipsky's position to plaintiff with a view towards effecting the sale, and thereby acquiring an agent's fee and/or an interest in the corporation.

Pepper's attorney also asserts that even if they are viewed as misrepresentations rather than opinions, Pepper's comments to plaintiff about Ritenour and Lipsky's resignation concerned future expectations and therefore are not actionable.

The New York rule⁴ is that an alleged fraudulent representation is not actionable if it relates merely to future expectations:

[I]t must relate to a past or existing fact or something equivalent thereto, as distinguished from a mere estimate or expression of opinion.

National State Bank of Newark v. Flatbush Coin-O-Wash, Inc., 236 N.Y.S.2d 636, 637-38 (S. Ct. Kings 1963). However, the representation Pepper made was not that the two officers could, would or might resign, but that they had threatened to resign. That is a misrepresentation as to a past or existing fact.

Pepper is likewise liable to plaintiff for concealing from her the fact that negotiations for the sale of MTS indicated a probable corporate value of two to three million dollars. "A client is entitled to all the information helpful to his cause within his attorney's command." Spector v. Mermelstein, 361 F. Supp. 30, 39 (S.D.N.Y. 1972), aff'd in relevant part, 485 F.2d 474 (2d Cir. 1973). Particularly where an attorney seeks to benefit from a contract made with his client, as Pepper did here,⁵ he must "bend over backwards" to give the client every relevant fact as it becomes known to him, to inform him of all his rights and to completely disclose any disadvantage under which the transaction places the client along with the corresponding advantage that thereby accrues to the attorney. See Whitehead v. Kennedy, 69 N.Y. 462, 466 (1877); Reinhardt v. Smith, 17 N.Y.S.2d 77, 78 (S. Ct. Queens 1939). The burden of proof in this regard is on the attorney (60 Columbia St., Inc. v. Leofreed Realty Corp., et al., 110 N.Y.S.2d 417, 422 (S. Ct. N.Y.Cnty 1952); aff'd, 120 N.Y.S.2d 925 (App. Div., 1st Dept. 1953)), and Pepper has failed to sustain this burden.

4. None of the defendants is liable to plaintiff on her Fourth Claim.

Standing alone thoughts, ideas, plans, schemes or intentions do not constitute any actionable civil wrong. Rather it is the performance of an act, either tortious in itself or accomplished by wrongful means, by one or more persons pursuant to an agreement between two or more individuals which gives rise to civil liability.

Smith v. Helbrau, 238 N.Y.S.2d 212, 218-19 J. Ct. Westchester
1963) (emphasis added). As plaintiff has failed to introduce
convincing evidence of any agreement, express or implied,
to defraud her in either her individual capacity or as
executrix for her husband's estate, she may not recover on
⁶
this claim.

5. Ritenour and Lipsky are not liable to plaintiff
on her Fifth Claim. Section 10-b of the Securities Exchange
Act prohibits the use, in connection with a sale or purchase
of securities, of any manipulative or deceptive device.⁷ As
noted above, neither Ritenour nor Lipsky ever threatened
plaintiff with resignation or agreed with Pepper that he
should do so to induce a sale of stock.⁸ Furthermore, in
purchasing plaintiff's stock, they made full disclosure of
all material facts to her agent, Pepper. Since the court has
found no convincing evidence of a conspiracy or common scheme
to defraud, Pepper's acts or omissions are not attributable
to Ritenour and Lipsky.

6. Pepper is not liable to plaintiff on her
Fifth Claim. She has, in essence, alleged two distinct
causes of action against Pepper based on Rule 10-b-5. The
first is that he knowingly misrepresented that Ritenour and
Lipsky had threatened to resign. This cause of action must
be dismissed because plaintiff has failed to prove reliance,
i.e., she has failed to convince the court that this
misrepresentation was "a substantial factor" in determining

her course of cor. ct. List v. Fashion Park, 740 F.2d 457, 462 (2d Cir.), cert. denied sub nom., List v. Lerner, 382 U.S. 811 (1965).

The second such cause of action is that in failing to inform her of negotiations for the sale of MTS and the range of offering prices therein discussed, he omitted "a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading." Rule 10-b-5(2), 17 C.F.R. § 240.10-b-5 (1974). The statements, of course, which Pepper made were those advising, as her attorney, that it would be in her best interest to accept the \$15 and then the \$10 offer. As noted above, and as plaintiff's counsel freely admits, however, plaintiff never sought an appraisal of the value of the corporation. Indeed, before accepting the \$10 offer; which put her on notice that Pepper was acting for both sides in the transaction, she never even consulted her brother-in-law who was on the board of directors and as such, was in a position to fairly estimate the sale
9
value of the corporation.

In the court's view, therefore, plaintiff has failed to demonstrate the due diligence expected of a majority stockholder who seeks to recover damages based upon alleged 10-b-5 violations. Cf. City National Bank v. Vanderbloom, 422 F.2d 221, 230 (8th Cir. 1970); Jackson v. Oppenheim, CCH 1970-71 Transfer Binder ¶ 93,003 (S.D.N.Y. 1971). Plaintiff had a duty to exercise an informed judgment when confronted

with defendants' offer.

Hindsight reaction to an improvident sale by an insider to a stranger or even another insider, based upon nondisclosed facts equally known or available to both parties ordinarily would not be considered within the protective basis of Rule 10-b-5

Myzel v. Fields, 386 F.2d, supra at 736. See also Shappirio v. Goldberg, 192 U.S. 232, 241-42 (1904).

7. Plaintiff has proved no cause of action against Miriam Pepper. The case is accordingly dismissed with prejudice as to her.

8. In accordance with the stipulation of the parties at trial, the affirmative defenses based upon the release agreement voided by Judge Frankel are dismissed.

DAMAGES

Because plaintiff has not demonstrated reliance on Pepper's misrepresentation of resignation, or due diligence in investigating the worth of MTS, Pepper will not be held liable for the profits which Ritenour and Lipsky receive on the sale of her stock. However, in purchasing stock in his wife's name as detailed above, Pepper himself derived an unconscionable profit in violation of his fiduciary duties to plaintiff which he is not entitled to retain. He will therefore be held liable for the profits which his wife received, and is hereby ordered to account to plaintiff
for those profits.¹⁰ The case will be referred to a magistrate for that purpose.

The court likewise awards plaintiff punitive damages for Pepper's breaches of fiduciary duty. New York courts countenance the award of such damages where, as here, the wrongdoer has acted maliciously or with a recklessness that betokens improper motive. Douglas v. Tomkins Realty Corp., 210 N.Y.S.2d 550, 552 (S. Ct. Bronx 1960). The policy behind the award of punitive damages in actions for breach of fiduciary duty has been eloquently detailed by Chief Judge (now Justice) Berger:

[O]nce it has been shown that one trained and experienced holds himself out to the public as worthy to be trusted for hire to perform services for others, and those so invited do place their trust and confidence, and that trust is intentionally and consciously disregarded, and exploited for unwarranted gain, community protection, as well as that of the victim, warrants the imposition of punitive damages. This is particularly true in areas of conduct where the acts committed, while reprehensible, may fall short of rendering the wrongdoer subject to criminal prosecutions. When one is commissioned by, or holds himself out to, the community to perform special services which may be engaged in for hire by others in the conduct of their personal or business affairs, such as lawyers, trust companies, realtors, or the like, such persons inescapably assume certain fiduciary responsibilities. The community in turn has a broad public interest, as a matter of public policy, in how such persons conduct their relations * * * In this case we express the broad public policy by the imposition of punitive damages. Punitive damages are particularly apt in such circumstances because they both punish the wrongdoer, and offer the wronged a greater incentive to bring derelicts to justice. . . .

Brown v. Coates, 253 F.2d 36, 40 (D.C.Cir., 1958). In Coates the defendant lawyer and real estate broker entered into a contractual agreement with plaintiffs whereby he defrauded them of \$7,000. The Court of Appeals upheld an award of \$7,500 in punitive damages in addition to that of \$7,000 in compensatory damages. In this case the court chooses to limit the award of punitive damages to the same amount plaintiff wins as compensatory damages upon Pepper's accounting.

SO ORDERED.

Dated: New York, New York

August 27, 1975

U. S. D. J.

ROSALIE M. ARLENHAUS, et al. v. J. RICHMOND RITENOUR, et al.,
68 Civ. 3537 (HFW)

NOTES

1. In December of 1966 plaintiff had been advised by Pepper that in order to meet the IRS assessment "the sale of stock is undoubtedly called for in the near future" (Exhibit D, p. 4). Similarly Clem felt that such a sale was necessary to pay the estate tax (Tr. 89). Lastly, plaintiff wrote to Ritenour on May 15, 1967, in contemplation of the \$20 sale, authorizing payment of \$80,000 of the money due her to Pepper's firm for use in satisfying the IRS lien (Exhibit B).

2. With respect to his wife's acquisition of MTS stock Pepper testified on direct examination as follows:

Q: How did you happen to put the stock you acquired . . . into Mrs. Pepper's name instead of your own?

A: Well, I personally had had a coronary, and I was in anything but the best of health.

It didn't seem sensible to me, with my tax background, to add to my so-called estate, so I preferred to give her the opportunity to make the investment, assuming that she would outlast me. That way, we could save a Federal Estate Tax on the property passing from my estate to her.

(Tr. 405-06).

3. To average \$20 a share pursuant to this plan plaintiff needed to receive approximately \$27 a share for the remaining MTS stock in her possession.

4. The court has only pendent jurisdiction of this common law claim against Pepper (See United Mine Workers v. Gibbs, 383 U.S. 715, 725 (1966)) and therefore will apply the law of the forum state in considering the legal issues raised.

5. As Pepper's direct testimony quoted above at note 2 indicates, he himself viewed the purchase of stock in his wife's name as a sale to him. Use of her name was a mere formality chosen for estate tax purposes. In any case "a fiduciary who arranges a transaction in breach of his fiduciary obligations does not free himself of the resulting personal liability therefore

by so arranging it that the money paid thereon is routed directly to others instead of having it pass through his hands." *Gerdas v. Reynolds*, 28 N.Y.S.2d 622, 661 (S. Ct. N.Y. Cnty 1941).

6. Plaintiff would have the court infer an agreement to defraud from the fact that Ritenour and Lipsky failed to contact her again after the Rainbow Room luncheon to deny the continuing rumors that they had threatened to resign, or to report to her that Pepper had "created" the threat out of thin air. The court finds however that no such agreement was entered into even sub silentio by the defendants to this action. In resting on their previous denial the officers were not seeking to aid Pepper in any scheme to defraud his client. In instructing Pepper not to make such threats and in specifically denying the threat at the Rainbow Room luncheon Ritenour and Lipsky satisfied their duty to plaintiff.

7. Rule 10-b-5 defines manipulative and deceptive devices; it states:
 It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of a national securities exchange,
 - (1) to employ any device, scheme or artifice to defraud,
 - (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
 - (3) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.
 17 C.F.R. § 240.10-b-5 (1974).

8. Ritenour and Lipsky in any case had a right to resign from the corporation so long as they gave its directors and shareholders the notice needed to elect replacement officers. See *The American Bluefriarsveem, Inc. v. Heidl, et al.*, 35 Civ. 756 S.D.N.Y. 1946, at 38. Therefore even had they threatened to resign, this would not under New York law constitute duress. See *Bachorik v. Allied Control Co.*, 34 A.D.2d 940, 312 N.Y.S.2d 272 (1st Dept. 1970).

9. The very wording of the sale agreement, furthermore, put plaintiff on notice that the defendants fully expected to be able to arrange a sale of the stock at a minimum of \$27 a share, more than twice the price offered.
10. In her complaint plaintiff seeks in the alternative rescission of the sale to Mrs. Pepper and a declaration that she holds for plaintiff's benefit the shares of Sonderling Broadcasting Corporation stock received by her in exchange for the MTS stock purchased from plaintiff, or compensatory damages in the amount of the value of such stock with interest from June 30, 1967. However, in her post-trial brief she states:
- Defendants. . . must account to plaintiff as constructive trustees. Plaintiff has the choice, however, to hold defendants liable in damages, instead. (cite) . . . Plaintiff wishes to proceed against . . . Miriam Pepper for an accounting . . .
- Plaintiff's Post-Trial Brief at 57.

Entered
Oct 1, 1975
AO of NY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
ROZALIE M. ARLINGHAUS, Executrix
of the Will of Frank W. Arlinghaus,
Individually,

Plaintiffs, :
-against- :
J. RICHMOND RITENOUR, JOHN J.
LIPSKY, MIRIAM PEPPER and SIDNEY
PEPPER,
Defendants. :
-----x

ORDER of Judgment

68 Civ. 3537 (HFW)

Dec'd for Chambers
of Justice Hausey, U.S.A.
Sept 23, 1975

HENRY F. WERNER, D. J.

This action having come on for trial before this Court, and the issues having been duly tried and a decision having been duly rendered on August 27, 1975 , and filed on August 28, 1975 , and there being no just reason for delay of entry of judgment, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure,

IT IS HEREBY ORDERED, that J. Richmond Ritenour John J. Lipsky be severed as defendants from the above-entitled case.

FURTHER ORDERED, that the above-entitled case be dismissed on the merits as to J. Richmond Ritenour and John J. Lipsky.

FURTHER ORDERED, that J. Richmond Ritenour and John J. Lipsky recover of the plaintiff their costs to be taxed.

SO ORDERED.

Dated: New York, New York
Sept 30, 1975

Henry F. Weeden
U. S. D. J.

Judgment Entered: 10-2-75

Raymond F. Brusham, Jr.
CLERK

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2 upheld, not be dispositive of all of the other issues in
3 this action.

4 MR. O'KEEFE: I am not saying it is dispositive.

5 THE COURT: All right.

6 MR. O'KEEFE: I want your Honor to be in a
7 position to judge it.

8 THE COURT: I would consider that judgment of
9 Judge Frankel's in conjunction with the other facts, but
10 I would consider that I was bound by his judgment in that
11 action.

12 MR. O'KEEFE: On that issue.

13 THE COURT: On that issue, no other issue.

14 MR. O'KEEFE: That would be all right with my
15 defendants, your Honor.

16 MR. JENSEN: Let me state that my understanding
17 of that issue is whether the agreement of June 7, 1968
18 should be upheld with whatever effect it may have, if any.

19 THE COURT: That is what we are saying in effect.

20 MR. JENSEN: If it is, then I am in agreement.

21 THE COURT: All right.

22 MR. O'KEEFE: Defendants Lipsky and Ritenour,
23 your Honor.

24 THE COURT: Mr. Matthews, you would not want
25 to stand in the way of getting this thing tried and

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C. Arlinghaus-direct

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2 Q Have you taken any economics courses?

3 A No.

4 Q Financial courses?

5 A Not formally as such, no.

6 Q What was your association with your brother's
7 company? Will you give it to us chronologically and
8 briefly. Let's identify them first.9 A Yes, in the late 1940s my brother asked me to
10 join the board of his corporation, Modern Talking Picture
11 Service; and I did so.

12 Q For how long did you remain a director?

13 A I remained a director of Modern Talking Picture
14 Service until I believe January 1968.

15 Q And any other company?

16 A The other company, Modern Teleservice, if my
17 memory serves me correctly, was at one time a division of
18 Modern Talking Picture Service; and as its activities
19 grew, it was made a separate corporation.

20 Q Do you recall when that was?

21 A It was in 1956.

22 Q What was the business of Modern Talking Picture
23 Service?24 A Its business was to arrange for the distribution
25 of what I was told were called "sponsored films" where

1 mb1m

C. Arlinghaus-direct

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2 corporations would have a film produced regarding their
3 activities, and they wanted it shown to various types of
4 audiences.

5 Q And the business of Teleservice?

6 A The business of Teleservice was to process and
7 distribute television commercials, see that they got to
8 the station on time, that sort of activity.

9 Q For how long did you remain a director of Tele-
10 service?

11 A From its inception until early 1969.

12 Q Were you ever an officer of Teleservice?

13 A No, sir.

14 Q Or Modern Talking Picture?

15 A No, sir.

16 Q Were you ever an employee?

17 A No, sir.

18 Q Did you have any other title than that of member
19 of the board of directors in either company?

20 A No, sir.

21 Q Who was the chief officer of Teleservice?

22 A The chief officer of the Teleservice was Mr.
23 Ritenour.

24 Q Who was the chief officer of Modern Talking
25 Pictures?

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C. Arlinghaus-direct

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2 A My brother, Frank.

3 Q Who ran Teleservice?

4 A Mr. Ritenour was the chief operating officer.

5 Q Did your brother have any officership in that
6 corporation in Teleservice?7 A As I recall it, he was simply a member of the
8 board of directors. I believe he acted as chairman during
9 his lifetime, chairman of the board.

10 Q When did you first get to know Mr. Ritenour?

11 A Well, surely at the time of the creation of
12 Modern Teleservice. I honestly can't recall. I believe
13 I had met him before then.14 Q Were you aware what Mr. Ritenour was doing
15 before he acquired -- before he became president of Tele-
16 service?17 A I believe so. I believe I learned at the time
18 that he had been directing this type of activity within
19 Modern Talking Picture Service.

20 Q Did you have any personal knowledge of that?

21 A Not directly, sir.

22 Q Who was the lawyer for Modern Talking Picture
23 Service?

24 A The firm of DeWitt, Pepper & Howell.

25 Q Who in the firm of DeWitt, Pepper & Howell

performed the work for Modern Talking Picture Service?

A Mr. Sidney Pepper.

Q The defendant in this action?

A Yes, sir.

Q Who was the lawyer for Teleservice?

A DeWitt, Pepper & Howell.

Q Who in the firm did the work, the legal work for them?

A Mr. Pepper.

Q What duties did you have as a director of Teleservice?

A My duties were to attend the board meetings, the meetings of the board of directors and listen to the discussions and act on resolutions as they were presented.

Q How often were these meetings held?

A Four times a year.

Q Apart from appearing at board meetings, did you put in any other appearances at Teleservice's offices?

A I don't recall, sir. It would be most unusual.

Q Do you not recall whether you did or do you not recall doing it?

A I don't recall doing it, sir.

Q Did you in any other way get involved in Teleservice's day-to-day business?

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C. Arlinghaus-direct

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2 A No, sir.

3 Q Did you know any of the customers of Teleservice?

4 A Not directly, sir, no.

5 Q Did you know who they were?

6 A Yes, I would hear these very common names. There
7 were large corporations like Proctor & Gamble and American
8 Home Products.

9 Q What was the second one?

10 A I knew many of them by name when they were
11 mentioned at the board meetings but I had no direct knowledge
12 of them as customers.13 Q For example, did you know what Teleservice was
14 doing for Proctor & Gamble?15 A Yes, they were processing television commercials.
16 I mean they would arrange to get them duplicated and the
17 particular quantities needed where they should be.

18 Q Did you have any personal involvement in that?

19 A No, sir.

20 Q Can you name any other major customers?

21 A Colgate Palmolive Peet, I think, was another one,
22 Kellogg for a time perhaps.

23 Q Beg your pardon?

24 A Kellogg Company.

25 Q How did it come to your attention that these

1 mblm C. Arlinghaus-direct 38

2 were customers of Teleservice?

3 A At the board meetings when there would be a
4 discussion of current business.

5 Q Who ran the board meetings?

6 A Mr. Ritenour; after my brother's death.

7 Q When your brother was alive, who ran the board
8 meetings?

9 A Well he acted as chairman of the board of
10 directors' meetings

11 Q Who made the presentations?

12 A Mr. Ritenour.

13 Q Can you tell us how these meetings went? Was
14 there a certain format that was followed?

15 A Well, generally speaking, there would be of
16 course a reading of the minutes of the preceding meeting,
17 and then Mr. Ritenour would present what had happened or
18 what was happening, including financial results, and there
19 would be some discussion of that; and toward the close of
20 the meeting there was usually a resolution for the divi-
21 dend.

22 Q Did you see it as your function to participate
23 in any parts of these discussions?

24 A Just to bring common sense to them, that's all.

25 Q Did you know anything about the bills of Teleservice

1 mb1m C. Arlinghaus-direct 19

2 other than what you learn at the board meetings?

3 A No, sir.

4 Q Who owned the stock of Teleservice when Frank
5 died?

6 A There was at that time & far as I recall it a
7 voting trust among all the stockholders; and the major
8 voting trust certificate holder was my brother and the
9 estate, and I believe Mrs. Arlinghaus and several other
10 stockholders.

11 Q As a matter of fact, who was the voting trustee
12 while your brother was alive?

13 A My brother was the voting trustee while he was
14 alive.

15 Q Who succeeded him?

16 A I did.

17 Q For how long did the voting trust agreement
18 remain effective?

19 A The voting trust agreement on Modern Teleservice
20 remained effective until October of 1966.

21 Q Were there any sales restrictions, restrictions
22 on the free sale of the stock?

23 A Yes, there was also an agreement between the
24 voting trust certificate holders, stockholders.

25 Q What in substance, without being technical, did

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C. Arlinghaus-direct

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2 Q Do you recall any particulars of those dis-
3 cussions?

4 A Yes, I recall that --

5 Q If you would like to refer to your notes to
6 refresh your recollection, you may do that.

7 A We had a meeting in December, early December of
8 1966, in which we discussed the matter of the assessment
9 of the estate tax that was being approached by the Internal
10 Revenue Service.

11 Q Who were present at that meeting?

12 A Myself and Mrs. Arlinghaus and Mr. Pepper.

13 Q Can you give us a date for that meeting?

14 A December the 7th.

15 Q Do you recall the substance of what was discussed
16 and decided at that meeting?

17 A Yes, as I say, we discussed the possibilities
18 of how to meet this estate tax assessment, and considered
19 the possibility of selling the Teleservice stock to the
20 corporation.

21 Q What was said about that?

22 A That it might be desirable if we could get a
23 price under the agreement of \$20 or better per share.

24 Q Do you recall anything more about the substance
25 of that conversation?

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C. Arlinghaus-direct

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2 A There were other things that were discussed
3 having to do with the relationship of the various directors.

4 Q Well as far as it bears on my first question
5 which was, was there a discussion about what should be
6 done with the stock of the estate? If you can tell us,
7 sir.

8 A The only discussion was that the estate had a
9 right to call upon the corporation to purchase its stock
10 that had a certain time limit on it and that would be
11 purchased at a particular formula price. And if that
12 formula price were to be as good as \$20, we thought that
13 might be a desirable thing to do.

14 Q Do you recall what the size was of the assessment
15 in dollars?

16 A Somewhere around \$80,000.

17 Q Did you at that time have --

18 MR. MATTHEWS: May I interject here? I didn't
19 hear that question. Could it be read back? \$80,000 what's
20 the answer.

21 THE COURT: Certainly. It was the amount of
22 the estate tax assessment as I understand it. That was
23 the question: What is the amount of the assessment?

24 MR. MATTHEWS: I am sorry to interrupt.

25 THE COURT: He didn't mention the estate tax

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C. Arlinghaus-direct

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2 but I am assuming that is what it was.

3 Q Mr. Arlinghaus, as of that time, in December of
4 1966, did you have an opinion of the value of the stock
5 of the Teleservice stock?6 MR. O'KEEFE: Objection. He has not qualified
7 this witness as an expert.8 MR. JENSEN: So far the question is whether he
9 has an opinion.10 MR. O'KEEFE: He is not entitled to have an
11 opinion.12 THE COURT: He does not want you to sneak in an
13 answer on him, so I will sustain the objection.14 MR. O'KEEFE: I got caught once. It's enough
15 for one day.16 THE COURT: All right, Mr. O'Keefe. Your objec-
17 tion is sustained. You have to lay a foundation for that,
18 Mr. Jensen.19 Q Did there come a subsequent time when that sub-
20 ject matter, what to do with the stock of the estate was
21 discussed in your presence?22 A Yes, later that month we had a further meeting
23 including not only Mrs. Arlinghaus, Mr. Pepper, but a
24 friend of mine, Mr. Milton Lewis.

25 MR. O'KEEFE: Could you repeat that name please?

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C. Arlinghaus-direct

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2 A Mr. Milton Lewis.

3 Q Can you tell us what was said at that meeting
4 by those present?5 A We had a meeting to discuss further this matter
6 of how to meet this estate tax assessment; and we discussed
7 various alternatives. There was a right to the estate to
8 put its stock in the corporation to the other corporation
9 as well as the one to Teleservice, and so we reviewed what
10 the various possibilities were, and what the potential
11 formula price might be; and my recollection is that we
12 decided not to do anything at that point.

13 Q To do what, not to do --

14 A Not to offer the stock to the corporation, sir.

15 Q Was there any decision made with respect to the
16 sale of the stock apart from to whom?

17 A No, sir.

18 Q Let me just get one thing straight: You spoke
19 in connection with the December 7th meeting about a possi-
20 bility of putting the stock, if the price should be at
21 least 20, you said.

22 A Yes, sir.

23 Q At this meeting on December 28, 1966, was it
24 that same put possibility that was up for discussion?

25 A Yes, sir.

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C. Arlinghaus-direct

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2 Q And the decision was not to put?

3 A Not to do so at that point.

4 Q Did you have any further discussions with Mrs.
5 Arlinghaus or Mr. Pepper about the sale of the Teleservice
6 stock in the period from that meeting until April 25, 1967?

7 A None that I can recall, sir.

8 Q Would you tell the Court now what happened on
9 or about April 25, 1967, with respect to the Teleservice
10 stock?11 A Yes, I received a copy of a letter from Mr. Riten-
12 our to the stockholders of Teleservice offering to purchase
13 all of the shares of the corporation at a price of \$15 a share.

14 Q Do you have that notice?

15 A Yes, I have it with me.

16 Q Would you please produce it?

17 (The witness handed a paper to Mr. Jensen.)

18 MR. JENSEN: I offer it into evidence.

19 MR. O'KEEFE: No objection, your Honor.

20 THE COURT: You want to ask Mr. Matthews if he
21 has any objection?

22 MR. JENSEN: Yes, I will.

23 MR. MATTHEWS: No objection.

24 THE COURT: It may be received.

25 (Plaintiff's Exhibit 1 for identification

2 THE COURT: You may go ahead, Mr. Arlinghaus.

3 A My notes indicate that to me, to remind me that
4 Mr. Pepper during the conversation with me told me that
5 both Mr. Ritenour and Mr. Lipsky were quite serious in
6 their desire to purchase all the stock of the corporation.
7 that they had adequate backing for it, and that they had
8 reason to pull out, is the phrase I think I had here, if
9 the offer -- either the offer were not accepted or an
10 acceptable counter-offer made.

11 Q Do you recall any more of that conversation, sir?

12 A Only that he thought it would be well if we sat
13 and met with Messrs. Ritenour and Lipsky directly to dis-
14 cuss it further.

15 Q Can you place that conversation in time?

16 A Yes, it was on May the 5th, 1967.

17 Q Was it a telephone conversation?

18 A Yes, sir.

19 Q What action did you take on this? More parti-
20 cularly did you set up a meeting to discuss this with
21 Messrs. Ritenour and Lipsky?

22 A Yes.

23 Q Would you tell the Court about that?

24 A I called Mr. Ritenour and we agreed to meet for
25 a luncheon meeting in the Rainbow Room on May the 10th.

1 mb1m C. Arlinghaus-direct 50

2 Q Did that meeting take place?

3 A Yes, it did.

4 Q Who attended?

5 A Mr. Ritenour and Mr. Lipsky, Mrs. Arlinghaus,
6 myself, and Mr. Pepper.

7 Q Would you give us your best recollection as to
8 what was said by whom on that occasion?

9 A I can only recall the substance of that.

10 Q Would you give us the substance, please.

11 A But the substance of it, that Mr. Ritenour and
12 Mr. Lipsky --

13 Q Would you tell us who spoke so that we know?

14 A I think they each spoke, but I have no direct
15 recollection of who spoke or who said precisely what.

16 Q All right, would you tell us what Mr. Ritenour
17 said?

18 A I think he said he would like very much to get
19 a substantial part of the corporation, that he wasn't happy
20 with the way it had been developing and how it was operating
21 and that he felt so strongly in that regard that if we
22 could not work out an acceptable counter-offer to his offer,
23 that he felt he should have to resign.

24 Q What did Mr. Lipsky say?

25 A I believe his remarks were about the same substance.

1 mbhm

C. Arlinghaus-direct

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2 Q Do you recall what Mr. Pepper said?

3 A I honestly don't recall any details of that.

4 Q And do you recall what you yourself contributed
5 to the conversation?6 A I only recall that I was trying to be helpful to
7 my sister-in-law in a rather difficult situation. I tried
8 to find out just precisely what the answers and objectives
9 were, and what their real concerns were.10 Q Do you recall anything more about that conversa-
11 tion, the substance of that conversation?

12 A No, only that we agreed to consider it some more.

13 Q What happened after the meeting?

14 A After the meeting, Rosalie and I and Mr. Pepper
15 went down to the lobby of the Radio City building there.
16 There was no convenient meeting place for us there and
17 we --

18 Q You said Mr. Pepper?

19 A Mr. Pepper.

20 Q Go right ahead. I want to be sure we understand.

21 A So we met downstairs in a quiet corner of the
22 lobby of the RCA building.23 Q Can you tell me what the subject matter of your
24 discussion down there was?

25 A It was mainly the possible or potential courses

1 mblm

C. Arlinghaus-direct

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2 of action that Mrs. Arlinghaus could take in response to
3 this.

4 Q Do you remember what was said about that?

5 A Well, I do recall, perhaps maybe this was my
6 own thought, that if Mr. Ritenour and Mr. Lipsky really
7 were to leave the corporation, that I didn't know who we
8 would want to continue to run it?

9 Q Did you make any recommendation?

10 A I am trying to think. Not at that meeting I
11 don't think. I think we considered it further and decided
12 to make that counter-offer.

13 Q Was such a counter-offer made?

14 A Yes, it was.

15 MR. JENSEN: I am going to repeat a question,
16 your Honor, that you ruled on before, and I am offering
17 it not to prove the value of the corporation, but only to
18 prove the state of mind of Mr. Arlinghaus at the time, and
19 I think it's important for some of the issues. I am going
20 to ask Mr. Arlinghaus whether at that time he had an opinion,
21 he himself had an opinion, as far as he knew, the value of
22 Teleservice stock.

23 MR. O'KEEFE: Your Honor, it's not important
24 what this witness thought. What is important is what
25 offers were made to him and what offers he made.

1 mblm

C. Arlinghaus-direct

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2 a share.

3 Q Did you get a reaction?

4 A Yes, I believe I called Mr. Ritenour that after-
5 noon and he said he would take it under advisement with
6 his associates and get back to us.

7 Q Did he get back to you?

8 A The next morning Mr. Lipsky called me and said
9 that the \$20 offer was acceptable.10 Q Did you have anything further to do with that
11 transaction?12 A Yes, I called Rosalie on the phone and dictated
13 to her a form of a letter with which she could send her
14 stock to Mr. Pepper for forwarding to Mr. Ritenour and
15 his associates.16 MR. JENSEN: Your Honor, I have a copy of it.
17 If either defendant has a signed copy, I will be glad to
18 introduce that. It's the May 12, 1967 letter.19 MR. O'KEEFE: I have no objection to that, your
20 Honor, except to note that it's from the plaintiff to Mr.
21 Pepper. There is no indication that a copy was sent to
22 either Mr. Ritenour or Mr. Lipsky.23 MR. MATTHEWS: May I off the record ask, was this
24 intended to be Modern Teleservice?

25 MR. JENSEN: Yes, I will ask the witness about

1 mb1m

2 that?

3 A Yes. "This letter will authorize you to inform
4 Mr. Richmond Ritenour and Mr. John Lipsky of Modern Talking
5 Picture Service, Inc. of 619 West 54th Street."

6 Q To whom did you dictate that letter?

7 A It was either my sister-in-law or my niece.

8 Q Her daughter?

9 A Her daughter.

10 Q Did you dictate Modern Talking Picture Service?

11 A I am sure I did not, sir.

12 Q At any rate, Modern Teleservice was intended,
13 right, sir?

14 A Yes, sir.

15 Q You told us before that you have recommended
16 the sale at \$20, is that right, sir?

17 A Yes, sir.

18 Q Why did you do that?

19 A Well, because it was better than 15 for one
20 thing, and I knew that the --

21 Q Let me make my question a little clearer. Why
22 did you recommend a sale at all to Messrs. Ritenour --

23 A Because I felt in the circumstances that was
24 the thing to do.

25 Q Would you explain the circumstances that you

1 mb1m C. Arlinghaus-direct 57.

2 thought important?

3 A The circumstances being the message that we got
4 that if a proper or acceptable offer were not made, that
5 they would resign.

6 Q You know, don't you, that that proposed sale
7 at \$20 a share did not go through.

8 A That is what I understand, sir, yes.

9 Q Was eventually a sale made of stock from the
10 Arlinghaus estate to Messrs. Ritenour and Lipsky?

11 A Yes, it was, later on.

12 Q Did you take part in those negotiations?

13 A Not directly, sir.

14 Q When did you first hear that such a sale was
15 taking place?

16 A I believe that was in the early part of July
17 1967.

18 Q Can you tell us that date a little more precisely,
19 maybe by reference to your notes if you have any? Refresh
20 your recollection.

21 A No, I can't be more precise than that.

22 Q Who told you?

23 A I had heard of it indirectly, and I called Mrs.
24 Arlinghaus to inquire about it; and she then asked Mr.
25 Pepper to call me and explain it, which he did by telephone.

1 mblm

C. Arlinghaus-direct/cross

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2 Q How long did your connection with Teleservice
3 continue?

4 A Until sometime in April 1968.

5 Q What happened then?

6 A I understood from a telephone conversation from Mr.
7 Rite..our that there had been a meeting of the stockholders
8 and a completely new board of directors had been elected.

9 MR. JENSEN: Thank you. You may cross-examine.

10 CROSS-EXAMINATION

11 BY MR. O'KEEFE:

12 Q How was it, Mr. Arlinghaus, that you came to go
13 on the board of directors of Modern Teleservice, Inc.?

14 A I believe it was because I was already a member
15 of the original corporation's board of directors.

16 Q The board of Modern Talking Pictures, Inc.?

17 A Yes.

18 Q How did you come to go on that board? Who
19 invited you?

20 A My brother, who was president of the corporation.

21 Q Where were you working then?

22 A At Metropolitan Life Insurance Co.

23 Q What was your title, if you had one?

24 A I probably was a lower manager of some kind.

25 Q Are you still employed at Metropolitan Life?

1 mblm C. Arling*an*-cross 62

2 A Yes, sir.

3 Q What is your title now, sir?

4 A Vice-president.

5 Q Are you a full vice-president?

6 A Yes, sir.

7 Q In the actuarial field?

8 A In the group pensions field.

9 Q Group?

10 A Pensions.

11 Q Pensions.

12 Had you any experience in the talking picture
13 industry prior to your going on the board of Modern Talking
14 Picture?

15 A No, sir.

16 Q Had you ever had any experience in the business
17 of Modern Talking Picture, of distributing films before you
18 went on the board?

19 A No, sir.

20 Q Did you have any experience in the business of Mod-
ern Teleservice before you went on the board?

22 A No, sir.

23 Q Is it fair to say you were on the board because
24 your brother ran the company?

25 A Yes, sir.

1 mb1m

C. Arlinghaus-cross

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2 Q That was the reason?

3 A Yes, sir.

4 Q Did there come a time when you acted as a trustee
5 under a voting trust of the stock of Modern Teleservice?

6 A Yes, sir.

7 Q When was that?

8 A After my brother's death.

9 Q And when your brother died in 19 --

10 A August 1964.

11 Q -- were you also a trustee under the will of
12 your brother?

13 A No, sir.

14 Q What were the assets of your brother's which
15 formed the corpus of the trust of which you were the trustee?16 A They were the estate assets, whatever they were,
17 primarily the stock of the two corporations.18 Q Were you familiar with the fact that there was
19 an agreement between the shareholders of Modern Teleservice
20 dated October 15, 1956?

21 A Yes.

22 Q Can you identify that document? It's a Xerox
23 copy.24 A Yes, this looks to be the agreement with some
25 amendments.

2 Q Can you identify any of the signatures that
3 appear on the signatory page back here (Indicating)?

4 A I recognize the signatures of Mr. Ritenour; Miss
5 Cox, who was then secretary; my brother; Mr. MacCallum;
6 Mr. Eberle; and my sister-in-law, Rosalie Arlinghaus.
7 Those signatures I recognize.

8 MR. O'KEEFE: Your Honor, I offer as Defendant's
9 Exhibit A the agreement dated October 15, 1954 identified
10 by this witness.

11 MR. JENSEN: I object to it as irrelevant and
12 immaterial, your Honor.

13 MR. O'KEEFE: I think it's relevant, your Honor.

14 THE COURT: Mr. Matthews?

15 MR. MATTHEWS: I cannot see the relevancy of
16 this agreement.

17 THE COURT: I assume that the relevancy has
18 something to do with the formula which is to be --

19 MR. O'KEEFE: That's right, it's in it.

20 THE COURT: Received.

21 (Defendant Ritenour's Exhibit A for identifica-
22 tion received in evidence.)

23 Q Are you familiar with the terms of this document,
24 Mr. Arlinghaus?

25 A Not directly any more, sir; I did at one time.

2 Q Were you familiar at one time with the fact that
3 there is a formula in this document for the valuation of
4 the stock?

5 A Yes, sir.

6 Q In Modern Teleservice?

7 A Yes, sir.

8 Q Do you remember the formula?

9 A No, sir.

10 Q Did you at one time know it?

11 A Yes, sir.

12 Q Did you at one time apply it to determine the
13 values of the shares in Modern Teleservice?

14 A Yes, sir.

15 Q What was the number you reached after applying
16 that formula?

17 A Somewhere around \$16 a share.

18 Q When was that, sir?

19 A That was in late 1966.

20 Q Did you receive Plaintiff's Exhibit 1 from Mr.
21 Ritenour dated April 25, 1967? Did that come to you?

22 A Yes, sir.

23 Q Is this the first occasion that you had that Mr.
24 Ritenour and Mr. Lipsky were interested in buying the
25 shares?

1 mblm

C. Arlinghaus-cross

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2 subsequently in the later discussions.

3 Q You learned it between April 25, 1967 and May
4 12, 1967?

5 A Yes, sir.

6 Q When did you dictate this letter?

7 A I believe May the 11th or May the 12th. Excuse
8 me, May 12.9 Q Please continue. I am sorry, I didn't mean to
10 interrupt you.

11 A May the 12th.

12 Q How did it come to your attention that Mr. Riten-
13 our and Mr. Lipsky were making this \$15 offer on behalf
14 of someone else?15 A I can't pinpoint exactly when I learned that but
16 it was in the discussions that we had.

17 Q In the discussions that who had?

18 A At that time the luncheon meeting that I described,
19 and in the conversations that I had with Mr. Ritenour and
20 Mr. Lipsky afterwards, they spoke of speaking for associates.21 Q The luncheon meeting you talk about at the Rainbow
22 Room, that was May 10, was it not?

23 A May the 10th, yes, sir.

24 Q Did Mr. Ritenour or Mr. Lipsky at that lunch say
25 that they were acting for someone else? Do you remember

1 mblm C. Arlinghaus-cross 68

2 that?

3 A I have no precise memory of that. It could have
4 been.

5 Q When to your knowledge did Mr. Ritenour become
6 a stockholder of Modern Teleservice?

7 A I can only say that it was sometime before my
8 brother's death in August '64.

9 Q You don't know when?

10 A No, sir.

11 Q You know it was before your brother died?

12 A Yes, sir.

13 Q And did Mr. Lipsky also become a stockholder of
14 the company before your brother died?

15 A That's my recollection, sir.

16 Q Do you know how they came to be stockholders?

17 A I do not know directly, no, sir. I understand
18 that they purchased stock from some of the other stock-
19 holders.

20 Q Do you know whether they purchased stock from
21 your brother?

22 A I do not know that directly, but I understand
23 that was the case.

24 Q Did you ever have any discussions with your
25 brother about Mr. Ritenour and Mr. Lipsky while your

2 brother was alive and while they were working at the
3 company?

4 A Discussions in what way, sir? I am not sure I
5 follow your question.

6 Q Did your brother ever mention Mr. Ritenour and
7 Mr. Lipsky to you --

8 MR. JENSEN: Objection, your Honor.

9 Q -- while he was alive?

10 THE COURT: Sustained.

11 Q In this telephone conversation you had with Mr.
12 Pepper on May 8th, 1967, who originated that call?

13 A Mr. Pepper.

14 Q And what time was that during the day?

15 A I believe it was early in the morning.

16 Q You were in your office, were you?

17 A Yes, sir.

18 Q What did Mr. Pepper say to you on May 8th, 1967?

19 A I recall that he said we should give this serious
20 consideration.

21 Q When you say give this serious consideration --

22 A This offer, this offer to purchase the shares.

23 Q The offer of \$15 which was made on April 27th?

24 A Yes, sir.

25 Q Was this the first phone call by Mr. Pepper on

2 this subject?

3 A I can't say it was the first one, but it's the
4 one that -- it's the only one that I recall.

5 Q Do you recall that there were other phone calls
6 between April 25th and May 8th but you do not recall in
7 substance what was said?

8 A Not with Mr. Pepper, no, sir. No, I don't recall
9 that there were any.

10 Q Mr. Pepper then, according to your best recollec-
11 tion, waited from April 25th to May 8th to discuss this
12 with you, is that right?

13 A That would be my recollection, sir.

14 Q What did he say?

15 A He said in substance that we should consider
16 this offer seriously, that they had adequate backing for
17 this offer.

18 Q Did he say who the backers were?

19 A No, he did not, sir.

20 Q Did you know that anyhow?

21 A No, sir.

22 Q Please tell us the rest of this conversation.

23 A And that they were serious in their offer, and
24 that if we were not able to make a satisfactory counter-
25 offer, that they were considering resigning.

1 mblm

C. Arlinghaus-cross

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2 Q Are those his exact words?

3 A I cannot say those were his exact words. I have
4 to paraphrase because I don't recall.5 Q In paraphrasing you say Mr. Pepper said they,
6 Ritenour and Lipsky, were considering resigning.

7 A I would have to say it was stronger than that.

8 Well, what did he say?

9 A Again I can't recall the exact words?

10 Q In your direct testimony, if my notes are right,
11 you said that Pepper said that they had reason to pull
12 out. Does that refresh your recollection as to what Pepper
13 said?14 A Yes, there was some developing friction on the
15 board of directors, and they were -- had expressed some
16 unhappiness with that.17 Q I am trying to find out, and you understand this
18 case, and you understand what the issue is, and I want you
19 to tell me --20 MR. JENSEN: I object to that, your Honor. I
21 don't know what Mr. O'Keefe is trying to accomplish by
22 that.

23 MR. O'KEEFE: I am not cross-examining you.

24 THE COURT: I don't find it offensive, Mr.
25 Jensen.

2 MR. JENSEN: Just note my objection.

3

THE COURT: All right.

4 MR. O'KEEFE: I forget what I was saying. I
5 know I was --

6 THE COURT: It's just as well.

7 MR. O'KEEFE: Perhaps.

8 Q I am trying to find out what Pepper said to you
9 about Mr. Lipsky and Mr. Ritenour. At one point you said
10 he said they had reason to pull out. At another you say
11 that they would have to resign. Is there any other way
12 to put that? You put it twice now. Is there another
13 way? Do you have another recollection?

14 MR. JENSEN: May we have a time or times identified,
15 please? We are talking about several times.

16 MR. O'KEEFE: We know the time. We are talking
17 about a conversation on May 8th, 1967 that this witness
18 has firmly fixed in point of time. I am trying to find
19 out what it is he claims Mr. Pepper said.

20 Q Can you tell me that?

21 A I believe he said that they would resign if
22 this satisfactory offer or deal were not accepted; that he was
23 convinced of that.

24 Q Did he say they would resign if the \$15 offer
25 was not accepted?

A No, the substance, as I recall it, was that we should continue discussing it with them, that we should not reject the \$15 offer but seek to find an acceptable counter-offer.

Q Were you familiar at that time in May of 1967 that sometime before that two other officers of the company had resigned?

A I know that two -- I am aware that two officers of the company had resigned to go to other positions. They were the junior officers of the corporation.

Q Do you remember when you became aware of that?

A I am not sure of it. It must have been sometime slightly before that.

Q Was that submitted to the board of directors at some meeting that you attended?

A I believe it was, sir.

Q This luncheon that was arranged by you, was it?

A Yes.

Q How did you arrange it?

A By telephone with Mr. Ritenour.

Q What time did the luncheon begin?

A I believe it was at noon.

Q Where was it?

A In the Rainbow Room.

2 Q And attending was yourself, your sister-in-law,
3 Mr. Pepper, Mr. Ritenour, and Mr. Lipsky?

4 A Yes, sir.

5 Q How long did the lunch last?

6 A I would guess about two hours.

7 Q When in the luncheon did a discussion begin on
8 the subject of the offer that had been made by Mr. Riten-
9 our on April 25, 1967?

10 A I can't recall. I honestly don't know, but it
11 was sometime not too long into the luncheon.

12 Q What did you say?

13 A I have no clear recollection, sir. I was
14 there --

15 Q What did Mr. Pepper say?

16 A I have no clear recollection.

17 Q What did Mrs. Arlinghaus say?

18 A I think she expressed some concern about what
19 was being proposed.

20 Q What did she say?

21 A I do not recall in words.

22 Q You testified, if my notes are correct, that Mr.
23 Ritenour said that if there were no counter-offer, he
24 would have to resign.

25 A I do not recall exact words, sir. I am trying

1 mblm

C. Arlinghaus-cross

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2 to recall the substance of what was said.

3 Q Do you recall Mr. Ritenour saying he said what
4 you said on direct examination?5 A Not in those exact words. I said, sir, I tried
6 to recall the substance.

7 Q Do you recall the substance of what you said?

8 A Yes, I believe I said at the time only that we
9 would have to give it some further thought.10 Q Was there any other discussion at the luncheon
11 other than this discussion of what Mr. Ritenour would do
12 unless there were a counter-offer? Did you discuss the
13 merits of the \$15 offer?

14 A I honestly do not recall, sir.

15 Q Did you discuss a way to value the stock of this
16 corporation?

17 A I don't think so, sir.

18 Q Did you discuss the personalities of the backers
19 or the persons for whom you understood Mr. Ritenour was
20 making this offer?21 A No, sir, their identity never became known to
22 me.23 Q Did you discuss the availability of other pur-
24 chasers?

25 A I don't recall, sir.

2 Q Had you, as a director during 1967, made any
3 efforts to sell the stock of this corporation to any other
4 purchaser?

5 A I did not, sir.

6 Q Did it come to your attention after the death
7 of your brother that one of the alternatives available to
8 this company through its board of directors was to seek
9 out a purchaser for the stock or the assets of this company?

10 A Yes, I was aware of that as a possibility.

11 Q Had the board done anything further than become
12 aware of it as you had, to your knowledge?

13 A No, the board had taken no initiatives in those
14 directions that I recall.

15 Q Was this discussed at this luncheon?

16 A I do not recall. It's possible.

17 Q Is it your testimony that during a two-hour
18 luncheon, the only thing that really was discussed was
19 Ritenour's threat to resign if his counter-offer was not
20 accepted?

21 MR. JENSEN: I object, your Honor; that is an
22 unfair summary of what the witness said.

23 MR. O'KEEFE: I am cross-examining this witness,
24 your Honor.

25 THE COURT: Overruled. You may answer, Mr.

1 mblm

C. Arlinghaus-cross

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2 Arlinghaus. You may answer.

3 Q Do you want the question?

4 A Yes.

5 (Question read.)

6 A I would say that the main and perhaps sole
7 subject of that discussion at the luncheon was this offer,
8 and that -- and our possible response to it.

9 Q You mean the offer to buy?

10 A To buy; right.

11 Q I am talking about the offer to resign.

12 A That was an element in the discussion, sir, but
13 there was -- our main purpose for meeting was to talk
14 about the offer that he had made to buy.15 Q The \$15 that he was proposing, how was that to
16 be paid, did you understand?17 A It was my understanding it was to be paid
18 entirely in cash.19 Q Once you had discussed that it was a \$15 all-cash
20 offer, what else was there to discuss with respect to this
21 offer to buy the stock?22 A I recall there was some questions as to the
23 reasons for it, why they were so anxious to sell -- or to
24 buy, I should say, excuse me -- and to have the estate
25 sell, and the other stockholders.

2 Q You went downstairs in the elevator after you
3 had your luncheon and you say that you and your sister-in-
4 law and Mr. Pepper went somewhere down on the ground floor?

5 A Yes, sir.

6 Q How long did you stay there?

7 A About an hour-and-a-half, I believe.

8 Q Did you personally stay there one-and-one-half
9 hours?

10 A Yes, sir.

11 Q What time did you leave there?

12 A I would guess it would be about 3:30, 4:00
13 o'clock; somewhere in that area.

14 Q What did your sister-in-law say at that one-and-
15 one-half-hour meeting?

16 A I honestly can't answer that because I do not
17 recall any exact words, but I think her concern was that
18 whether she should move to accept this, whether she should
19 make a counter-offer, just what she should do in her
20 capacity both for the stock she owned herself and as the
21 executrix.

22 Q Were you acting as advisor to your sister-in-law?

23 A Only insofar as she chose to treat me as such.

24 Q Did she seek your advice?

25 A At that time, yes.

1 mblm

C. Arlinghaus-cross

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2 Q Did she call you up and discuss the problems of
3 the estate with you?

4 A Occasionally, yes, sir.

5 Q Was she serving as executrix of the estate?

6 A Yes, sir.

7 Q And you were a trustee?

8 A I was a co-testamentary trustee, I believe the
9 term was; that I was to become a trustee upon the settlement
10 of the estate.

11 Q Who was the other trustee of the testamentary
12 trust?

13 A My sister-in-law, Rosalie.

14 Q Did you have occasion to talk back and forth
15 with her during this period of time about estate problems?

16 A Yes, but not frequently.

17 Q How frequently?

18 A Maybe once every two months or so. Of course the
19 main problem at that point was the matter of the estate
20 tax assessment which was largely in the hands of her
21 counsel.

22 Q In that period of time, you were also a director
23 of this company, were you not?

24 A Yes, sir.

25 Q Was your sister-in-law a director?

1 mb1m

C Arlinghaus-cross

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2 A No, sir.

3 Q Did she in your conversations held every couple
4 of months inquire of you as to the progress of the company?5 A Yes, in fact I took the initiative to call her
6 occasionally to tell her what was -- what I had learned
7 from the directors' meetings.

8 Q And by "occasionally" you mean during --

9 A During the quarter, at least.

10 Q Quarterly after the meetings?

11 A Yes, sir.

12 Q Did she solicit any advice from you as to whether
13 she should sell or retain her shares and the custodian
14 shares and testate shares?

15 A I believe she did.

16 Q What did you tell her?

17 A I told her at that time that I thought she should
18 make a counter-offer of \$20.19 Q Did Mr. Pepper, during this meeting of one-and-
20 one-half hours in the bottom of Radio City, did he advise
21 your sister-in-law as to what she should do with respect
22 to this offer to buy the stock?23 A I cannot honestly recall. We all three of us
24 discussed the alternatives. I can recall my own --

25 Q Was there any one of the three of you who was

2 not disposea to sell this stock?

3 MR. JESEN: Objection, your Honor.

4 THE COURT: No, I will let him answer it.

5 A I am sorry, sir, I didn't get the question.

6 MR. O'KEEFE: Would you read that to Mr. Arling-
7 haus?

8 (Question read.)

9 A I guess I'd have to answer that, no, there were
10 not. We were tending toward that.

11 Q You all agreed that the stock ought be sold?

12 A I wouldn't phrase it "ought to be sold," but it
13 might be sold at that point.

14 Q All right. And was there disagreement about you
15 would like to get the highest price you thought you could
16 get for this stock? Did you all agree on that?

17 A I guess so, yes, sir.

18 Q That would be sensible, wouldn't it?

19 A Yes, sir.

20 Q And you thought -- you personally thought \$20, is
21 that so? Is that your testimony?

22 A I had figured that out, and I must say right now
23 I am not an expert in evaluating closely held corporations;
24 but I knew that \$15 a share was too low. I knew what the
25 put price was and it was just a feeling on my part that

1 mblm

C. Arlinghaus-cross

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2 \$20 might be a price that they'd accept.

3 Q The put price was what?

4 A 16.

5 Q 16. Do you know the initial evaluation submitted
6 to Internal Revenue on the estate tax audit?7 A I did at one time, sir. I am not sure I have it
8 in my memory.9 Q If I said \$3.75, would that refresh your recol-
10 lection?

11 A \$3.75 for Teleservice?

12 Q For the initial proposal to Internal Revenue.

13 A I thought it was higher than that, sir.

14 Q If I told you it was settled at \$9.75 after audit
15 by Internal Revenue, would that refresh your recollection?16 A That sounds more like what we were aware of at
17 the time.18 THE COURT: Mr. O'Keefe, I think it might be a
19 good idea if we took an afternoon recess at this point.

20 MR. O'KEEFE: Yes, sir.

21 THE COURT: You may step down, Mr. Arlinghaus.

22 (Recess.)

23 (Last question and answer read.)

24 MR. O'KEEFE: Your Honor, I call your attention
25 to the pre-trial order in this case at page 4, on the

1 mb1m

C. Arlinghaus-cross

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2 stipulated facts at the bottom of page, next to last para-
3 graph, it is stipulated as follows: "In the federal estate
4 tax return filed by Pepper for the estate, the Teleservice
5 stock was valued at \$75 a share as of the date of death,
6 the equivalent of \$3.75 after the 20-for-1 split mentioned
7 above. The value finally fixed by the IRS for estate tax
8 purposes was \$190.625 per original share at \$9.53 per
9 share after the split.

10 Q Does that conform to your recollection of the
11 dealings with Internal Revenue on the valuation, Mr. Arling-
12 haus?

13 MR. JENSEN: I have an objection to that, your
14 Honor. I don't think that evidence is material at all.
15 We are talking about price as of the date in 1964.

16 THE COURT: For purposes of this trial, I will
17 admit it as being somewhat relevant. The question of
18 time lapse may have something to do with it.

19 MR. JENSEN: Right.

20 MR. O'KEEFE: Would you ask that question of the
21 witness, please?

22 (Question read.)

23 A I would have to say yes.

24 Q Did Mr. Pepper, acting for the estate of your
25 brother, furnish to you or show to you copies of papers

2 to be submitted to Internal Revenue valuing the shares of
3 the stock of Modern Teleservice in t. - estate of which you
4 were a testamentary co-trustee?

5 A I don't recall seeing work sheets which he had
6 discussed with the IRS agents.

7 Q Did you ever see an affidavit submitted by Mr.
8 Pepper to Internal Revenue?

9 A I may have. I do not recall.

10 Q You have no recollection of that?

11 A No, sir.

12 Q This \$15 offer made by Mr. Ritenour and Mr.
13 Lipsky on behalf of someone else, was that made only to
14 your sister-in-law or was it made to all the shareholders?

15 A It was made to all the shareholders, according to
16 my knowledge.

17 Q And according to your knowledge, how many other
18 shareholders were there?

19 A I'd have to check notes but I think there were
20 about five or six others.

21 Q And did you learn what the reaction of the other
22 shareholders was to this offer to buy the shares for \$15?

23 A I was told that --

24 MR. JENSEN: Objection.

25 THE COURT: I am going to sustain the objection.

1 mblm

C. Arlinghaus-cross

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2 MR. O'KEEFE: Is the objection to the question or
3 to the form of the answer?

4 THE COURT: The objection is to the question I
5 take it.

6 MR. O'KEEFE: Excuse me, your Honor.

7 THE COURT: Did you inquire, Mr. Arlinghaus, of
8 the other shareholders?

9 THE WITNESS: No, I did not. I did not take any
10 initiative to inquire.

11 Q Do you know whether or not the other shareholders
12 ultimately sold their shares to Mr. Ritenour and Mr. Lipsky?

13 A It was my understanding that -- saw corres-
14 pondence which Mr. Pepper showed me of an attorney represent-
15 ing the purchasers, and it was my understanding at the time
16 that all of the stockholders had agreed at the \$20 price.

17 Q Is it your understanding that the company, Modern
18 Teleservice, had as customers Colgate and Kellogg's? Is
19 that your testimony?

20 A Yes, sir.

21 Q How long were you a director of this company?

22 A From its beginning in 1956.

23 Q Was it your understanding as a director that the
24 company, Modern Teleservice, dealt with and had as cus-
25 tomers, advertising consumers like Kellogg's and --

1 mbm

C. Arlinghaus-cross

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2 A That was my understanding. I believe we dealt
3 primarily with advertising agencies for these customers,
4 for these ultimate customers.

5 Q So they dealt with the agencies rather than
6 ultimate customers?

7 A That is my understanding, sir.

8 Q Then is it true when you say that Kellogg's
9 and Colgate, Proctor & Gamble, were customers? Is that
10 true?

11 A It was true in a sense in which I was trying to
12 express it, that it was their commercials that we were
13 trafficking through, through the agencies.

14 Q Through the agencies?

15 A Yes.

16 Q So the Teleservice where you served as a director,
17 from its inception dealt primarily with advertising
18 agencies and not with advertising consumers, isn't that
19 right?

20 A That's my recollection, sir.

21 Q When you had the meeting in December with Mrs.
22 Arlinghaus, Mr. Pepper, and Milton Lewis, where was that
23 meeting?

24 A It may have been in Mr. Pepper's office or at
25 the lawyer's club.

2 Q Did Mr. Lewis suggest a price at that time?

3 MR. JENSEN: Objection, your Honor.

4 THE COURT: Sustained.

5 Q Did Mrs. Arlinghaus have a price to suggest at
6 that meeting?

7 A I don't think so, sir.

8 Q Did you?

9 A I can only recall that some rough calculations
10 I had made, we had been looking at the book price of \$16
11 as it was then calculated.

12 Q Under the agreement which has been marked in
13 evidence?

14 A Under the agreement, yes, sir.

15 MR. O'KEEFE: I have no further questions.

16 THE COURT: Mr. Matthews.

17 CROSS-EXAMINATION

18 BY MR. MATTHEWS:

19 Q What was the federal estate tax figure that
20 needed to be paid?

21 A Something in the neighborhood of \$80,000.

22 Q Was there anything like \$80,000 available in the
23 estate in cash?

24 A I do not believe so, sir.

25 Q Was it necessary to sell stock in order to raise

A100
1 mblm C. Arlinghaus-cross 89

2 the money to pay the tax?

3 A It would have been, I believe. Mr. Pepper was
4 also arranging for an extension of time and perhaps borrow-
5 ing it somewhere.

6 Q I show you a letter dated May 15, 1967, and ask
7 you if you recognize that.

8 A I don't recall having seen this before but it
9 does remind me that one of the results from that attempted
10 sale was to develop funds for this.

11 Q It was to develop funds?

12 A Yes.

13 Q Is that Mrs. Arlinghaus' signature, do you know?

14 A Yes, to my knowledge.

15 MR. JENSEN: May we have these papers marked for
16 identification?

17 MR. MATTHEWS: I ask that it be marked Pepper
18 exhibit.

19 (Defendant Pepper's Exhibit B marked for identi-
20 fication.)

21 MR. MATTHEWS: I offer it.

22 THE COURT: Show it to Mr. Jensen and Mr. O'Keefe.

23 MR. O'KEEFE: Is this being offered, Mr. Matthews?

24 THE COURT: It's being offered.

25 MR. O'KEEFE: No objection, your Honor.

2 A Yes, this does look like something I did receive.

3 MR. MATTHEWS: I will offer this letter in evi-
4 dence, particularly with respect to the last two pages.

5 THE COURT: Let's mark it for identification
6 and show it to Mr. Jensen.

7 (Defendant Pepper's Exhibit D marked for identi-
8 fication.)

9 MR. JENSEN: I have objection, your Honor; it's
10 irrelevant and incompetent.

11 THE COURT: May I see it, please?

12 (Document handed to the Court.)

13 THE COURT: Show it to Mr. O'Keefe.

14 MR. O'KEEFE: I have an extra copy of it, your
15 Honor. I don't have any objection.

16 THE COURT: I may be received in evidence.

17 (Defendant Pepper's Exhibit D for identification
18 received in evidence.)

19 Q I take it, Mr. Arlinghaus, that you were a confidant
20 of Mrs. Arlinghaus and always available for advice and
21 guidance in connection with the affairs of your brother's
22 estate?

23 A Yes, insofar as she chose to confide in me.

24 Q And she did that apparently quite freely and
25 you kept in touch.

1 mbm

C. Arlinghaus-redirect

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2 Q What did you know about that one?

3 A Only that they were an advertising agency and
4 they had a great deal to do with placing business, so to
5 speak, for these commercials.6 Q You said that in answer to questions that Mr.
7 O'Keefe put, that there was a consideration that and even
8 something in the words, looking toward borrowing money for
9 the estate. Was there ever a decision made as to whether
10 it should borrow prior to the 25th offer which was the
11 first one to buy stock by Mrs. Arlinghaus?12 A This is where we left the subject in our last
13 discussions in December '66, because if it became necessary
14 we would try to find a source of credit to borrow that
15 money rather than to force a sale of the stock.16 Q That was your final decision before April 25th,
17 sir?18 A That was the temporary decision; I will put it
19 that way. I don't like the word "final."20 Q That was the most recent decision made before
21 April 25, 1967, sir?

22 A According to my recollection, yes.

23 Q You said the \$20 was a price that, as my notes
24 show it, that they might accept. Do you recall giving that
25 answer to a question?

1 mbm

C. Arlinghaus-redirect

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2 A Yes.

3 Q Was that opinion of yours based on an evaluation
4 of the fair market value of Teleservice, sir?5 A No, sir, I can't dignify it any more than just
6 a feeling that it was worth more than the \$16 I thought at
7 the time, that was the put price; or the \$15 that was
8 offered.9 Q Thank you. You mentioned that there were five
10 or six other shareholders. Do you happen to recall the
11 percentage of shareholdings of these others, approximately?12 A Well, Mr. MacCallum and Mr. Eberle were fairly
13 major stockholders after the estate, and the others I
14 think were relatively small holdings.

15 Q The estate held stock, right, sir?

16 A Yes, sir.

17 Q And Rosalie Arlinghaus did in her own name?

18 A Yes, sir.

19 Q The three children did, the three Arlinghaus
20 children?

21 A They were in some technical custodianship.

22 Q There were stocks in their name?

23 A Yes.

24 Q Teleservice?

25 A Teleservice.

2 Q When you received Exhibit D, Mr. Arlinghaus,
3 which is a letter to Mrs. Arlinghaus with copy to you from
4 Mr. Pepper, did you then have a conversation with Mrs.
5 Arlinghaus about the contents of this letter?

6 A I honestly can't recall one way or the other.
7 I may have. I can't say yes or no, sir.

8 Q Was there ever a time after December 21, 1966, where
9 you and Mrs. Arlinghaus discussed alternative methods of
10 raising funds to fund or pay the estate tax liability of
11 the estate of Frank Arlinghaus?

12 A That was the main subject of our meeting on
13 December 28th that year.

14 Q Of the same year?

15 A Same year.

16 Q One week later?

17 A Right, sir.

18 Q What I am asking you is: Was there anything
19 between the 21st and the 28th?

20 A I don't believe so, sir.

21 Q Did you consider any alternatives that were not
22 suggested in this letter? Mr. Pepper suggests either sell-
23 ing stock, borrowing money, declaring dividends, or a
24 combination of all three of those methods. Did you suggest
25 either a fourth or fifth alternative method?

2 A No, sir, the only alternatives I can recall
3 considering were either a sale of the stock or borrowing
4 or exercising the put against the corporations.

5 Q This stock that we are talking about, Modern
6 Teleservice, was not listed stock, was it?

7 A Oh, no, sir.

8 Q This is just closely held stock and the stock-
9 holders are those people we talked about before?

10 A Yes, sir.

11 Q And the idea of selling the stock, was that dis-
12 cussed by you to Mrs. Arlinghaus prior to Mr. Pepper's
13 advices of December 21, 1966?

14 A Not explicitly. I can say we probably had it in
15 mind as a possible alternative.

16 Q When was the first time after the death of your
17 brother that you had a discussion with your sister-in-law
18 about selling this stock?

19 A I think there may have been some one or two minor
20 discussions sometime in 1966 before this -- before these
21 negotiations came toward the end of the year. My impression,
22 and I have to admit that is my impression, now, some years
23 later, was that neither my sister-in-law was in no -- had
24 no particular desire to find a buyer for the corporation.
25 It was prospering, it was doing well, and her concern, and

1 mblm C. Arlinghaus-recross 100

2 one might have concerns as a potential trustee was ultimately
3 to find some way to diversify the trust's assets.

4 Q Did she not come to you soon after your brother's
5 death and ask you as her brother-in-law, what generally she
6 ought to be doing? Didn't she solicit your advice?

7 A To some extent, yes.

8 Q Didn't she ask you what she should do with this
9 company that her husband had left?

10 A The intention all along was that the two corpora-
11 tions which were quite viable corporations continue in
12 operation.

13 Q Did your sister-in-law have any business
14 experience?

15 A Not to my knowledge, no.

16 Q Had she ever worked for the company?

17 A No, sir.

18 Q During your brother's life had she worked at all?

19 A Well, before they were married she was a physical
20 therapist. That was her profession.

21 Q Physical therapist?

22 A Physical therapist, yes.

23 Q But after their marriage she was a housewife and
24 mother?

25 A She was a housewife and mother but my recollections

1 mb1m C. Arlinghaus-recross 101

2 are that my brother had created a capable set of officers
3 for the two corporations and they were able to continue
4 running it.

Q Did your sister-in-law tell you that too?

6 A This was the impression I had from the knowledge
7 I had gained of them. She did not have to tell me that,
8 sir.

9 Q You knew this from your own association. Just
10 one other thing now: Did your sister-in-law get advice
11 from Milton Lewis?

12 MR. JENSEN: Objection, your Honor.

13 THE COURT: I will let him answer the question,
14 if he knows.

15 A Perhaps.

O He was a long-time friend?

17 A of my brother's.

19 A But my sister-in-law and Mr. Lewis were not
20 particularly close.

21 MR. O'KEEFE: No further questions.

22 THE COURT: Mr. Matthews?

23 MR. MATTHEWS: No

24 THE COURT: All right

Now, there has to come an end sometime, Mr. Jensen.

mb1m

★★★
"Ritenour"

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your future in the company at that point?

3 "A Well I am hesitating in that. I want to present
4 it as nearly as I can recall, that because the war was over
5 and the country was at peace for a time and because of the
6 tremendous benefits of visual education as experienced in
7 the war effort, the potential future of the distributor
8 such as Modern Talking Picture Service, these industrial,
9 educational, documentary-type of films to schools and
10 churches in the future was unlimited in growth, expansion,
11 and development. And Mr. Arlinghaus was, at that time,
12 developing organizational strength by employing individuals
13 such as myself that had previous experience in business,
14 plus experience gained in activities performed while in
15 the service.

"Q Did he tell you what your position would be?

"A Yes. He said that he was in a development program of establishing company-owned divisions and offices throughout the country, and that I, along with two other gentlemen, were being placed on payroll to be the new leaders for the establishment and development of Modern Talking Picture Service in its facilities of distribution."

MR. JENSEN: Page 27, line 24 starts with the last part of an answer:

"A John and I were always looked upon as the leaders.

1 mb1m

"Ritenour"

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2 of the corporation and responsible for its development,
3 growth, and success as a team."

4 MR. JENSEN: This reference I think counsel will
5 agree is to Teleservice.

6 Page 99, line 12:

7 "Q Did you ever hear a rumor that you were supposed
8 to have said that you would quit the company?

9 "A Many, many times.

10 "Q Did you ever hear this rumor before the institu-
11 tion of this lawsuit?

12 "A Many, many times.

13 "Q Will you tell us of those times that you recall?

14 "A I cannot recollect implicitly the exact time or
15 date that these rumors came to my attention.

16 "Q I understand. Just give us your present recollec-
17 tion about them.

18 "A Mr. Carl Lenz of Modern Talking Picture Service
19 called me on the telephone and said, 'What is all this
20 crap I have heard about your threatening to quit?' and I
21 said, 'Goddamn it, has Pepper been talking again?'

22 "Q You assumed then that Pepper was Lenz's informant?

23 "A Yes.

24 "Q Mr. Lenz said that Pepper had told him that.

25 "A I did not say that.

2 "Q That was your assumption?

3 "A It had to come from Mr. Pepper.

4 "Q Why?

5 "A Because he had been using it from time to time
6 as I observed and found out.

7 "Q When you say 'he had been using it,' what do you
8 mean by that?

9 "A It came to my attention that he was using this
10 in conversations with Mr. Clemens Arlinghaus, Mr. Milton
11 Lewis, and Mrs. Rosalie Arlinghaus.

12 "Q When did you first find that out?

13 "A At the time the tender offer was presented by
14 John and me."

15 MR. JENSEN: And reference here I think counsel
16 ~~OPPONENT~~
will grow as to the \$20 offer:

17 "Q Who told you that?

18 "A Mr. Pepper, in a meeting in my office with John
19 Lipsky, said, 'Can I use the threat of your quitting or
20 resigning as pressure to accompany your tender offer?'

21 "Q Can you place this meeting, approximately at least,
22 in time?

23 "A Well, it had to be between the March 14th, I believe,
24 1967 board of directors meeting and the April 25, 1967
25 tender offer.

1 mba

"Ritenour"

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2 "Q What was your responsibility?

3 "A I told Mr. Pepper that there was never any thought
4 in my mind, and that there was no intention on my part, to
5 attain an ownership in the corporation by threat or infe-
6 nce, that if I did not get my way, that I would quit,
7 resign or leave.

8 "Q Was Mr. Lipsky there?

9 "A Yes.

10 "Q Was anyone else there?

11 "A No, sir.

12 "Q Your secretary?

13 "A No, sir.

14 "Q What did Mr. Lipsky have to say about this, if
15 anything?

16 "A He himself made the same stipulation to Mr. Pepper,
17 and that under no circumstances was was Mr. Pepper in any
18 way to use such devious methods or assertions."

19 MR. JENSEN: Page 109, line 22, it starts with
20 an answer:

21 "A John Lipsky and I worded the letter."

22 MR. JENSEN: I think counsel will grow that
23 reference to the April 25, 1967 letter from Mr. Ritenour.

24 MR. O'KEEFE: That is Plaintiff's Exhibit 1?

25 MR. JENSEN: Correct.

2 MR. O'KEEFE: *** That is what I find, Bonded Film

3 Services.

4 MR. JENSEN: Would you repeat that starting at
5 line 13:

6 "A There was never a formal written proposal by
7 Bonded to us. It was merely a verbal feeling-out.

8 "Q It was an inquiry?

9 "A Yes.

10 "Q Did you speak to Ross about the same subject
11 matter on later occasions?

12 "A Yes."

13 MR. JENSEN: Page 136, this again refers to the
14 conversation with Mr. Ross of Bonded, line 13:

15 "Q Did you ever suggest a satisfactory price to
16 him?

17 "A If I did, it would have been around the 3,000,000
18 mark.

19 "Q And when would you have done that?

20 "A Sometime between March 14, 1967 -- yes, March
21 14, 1967 and August 1st, 1967."

22 MR. JENSEN: I think counsel will agree that the
23 company here involved is Teleservice.

24 "Q Do you recall whether you did it in a face-to-face
25 conversation or on the telephone?"

1 mblm

"Ritenour"

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2 purchase of Teleservice?

3 "A No, sir.

4 "Q Did they come back with an oral proposal or
5 suggestion?6 "A To the best of my knowledge, they were not able
7 or willing to consider the multiple of earnings figure
8 which I believed a rightful and proper price for the pur-
9 chase or acquisition of Modern Teleservice.10 "Q Multiple was it that you suggested to them would
11 be fair? You are making some computations on a yellow
12 paid now. Do you recall the answer?

13 "A To answer that question, I do not recall.

14 "Q Thank you. Did anything in writing pass between
15 you and Novo about these matters at any time?

16 "A No, sir.

17 "Q How about you and Bonded?

18 "A No, sir.

19 "Q How about Teleservice and Novo?

20 "A No, sir.

21 "Q Teleservice and Bonded?

22 "A No, sir.

23 "Q There is no writing that you know of which would
24 reflect or bear on these negotiations?

25 "A No.

mb1m

"Ritenour"

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"A An invitation by me to Mr. Mintz to join me.

"Ω You called him?

"A Yes.

"Q What did you tell him you wanted to talk to him about?

"A To the best of my recollection, in my calling him on the telephone to arrange for a meeting, I wanted to get to know him personally, to become more familiar with his company and its operation and whether or not there was a possibility that he could be of aid, assistance and help in developing prospective buyers or financing for the purpose of the company.

"Q I believe you testified earlier that you were not authorized to act in these matters. Did you tell Mr. Mintz that?

"A I was not speaking in behalf of the corporation.
I was speaking in behalf of myself personally."

MR. JENSEN: Page 165, line 16, skipping the first three words.

"Q You were telling us about a meeting with Mr. Mintz. You were unable to pinpoint the date of that meeting at the last session. Can you do so now?

"A I don't know. I didn't know that I was asked to pinpoint it. The date I have here in my notes is October

1 mblm

"Ritenour"

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2 19, 1966, a meeting with S. Mintz of Previews, Inc."

3 MR. JENSEN: Page 170, line 4:

4 "Q Did you report to her" -- meaning Mrs. Arlinghaus--
5 "on your conversation with Mr. Mintz?6 "A I never reported directly to Mrs. Arlinghaus. I
7 worked through Mr. Pepper, her representative.8 "Q Did you report to Mr. Pepper about your first
9 meeting with Mr. Mintz?10 "A To the best of my recollection, Mr. Pepper knew
11 of my meeting.12 "Q What was the source of Mr. Pepper's information
13 about your meeting with Mr. Mintz?

14 "A I don't understand your question.

15 "Q To clarify it on the record so that we understand
16 each other.

17 "A I told Mr. Pepper about it.

18 "Q When did you tell him?

19 "A Presumably, prior to October 19, 1966.

20 "Q Did you report to him what had transpired?

21 "A I don't recall.

22 "Q Do you recall what he said to you during that
23 conversation?

24 "A I don't recall."

25 MR. JENSEN: Page 171, line 10:

1 mb1m

2 "Ritenour"

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2 Clerk?

3 "Q Did you ever talk to Mrs. Arlinghaus about Mr.
4 Mintz at any time?

5 "A Not to my recollection.

6 "Q Did you ever talk to Mrs. Arlinghaus about
7 Previews at any time?

8 "A Not to my recollection.

9 "Q Same questions with respect to Clem Arlinghaus.

10 "A To the best of my recollection, Mr. Clem Arling-
11 haus was knowledgeable of it as a director of the corpora-
12 tion, and the information pertaining to Previews, Inc. and
13 their fees and business arrangements were brought to the
14 attention of the board of directors.

15 "Q When was that done?

16 "A To the best of my recollection at a December
17 board of directors' meeting on December 12, 1966.

18 "Q Do you have anything that might aid you in firming
19 up your recollection in that respect?

20 "A I do not.

21 "Q Is there any mention of it in the meeting minutes?

22 "A Not in the minutes of the meeting. These matters
23 were not always included in the minutes of the board, as
24 they could have been prior to the call of meeting or after
25 adjournment."

1 mblm

"Ritenour"

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2 "Q Anything orally?

3 "A Yes.

4 "Q What were the modifications?

5 "A That the authorization not to exceed \$1,000,000
6 was increased, whereby the tender offer was made to the
7 stockholders at \$20 a share.8 "Q Which paragraph of the letter are you referring
9 to?

10 "A The third paragraph.

11 "Q Were any of the other provisions of the agreement
12 modified?

13 "A No."

14 MR. JENSEN: Page 262, line 15:

15 "Q Do you recall either precisely or approximately
16 when Mr. Pepper first talked to you about the possibility
17 of his acquiring stock in Teleservice?18 "A During the time John and I were developing a
19 program whereby we would propose to the stockholders that
20 we purchase individually 15 percent of their holdings.21 "Q Is it correct to say then that his first expression
22 of such interest to you came after June 9, 1967?23 "A No. He had expressed interest in acquiring stock
24 even during Mr. Arlinghaus' lifetime, but until the buy-
25 back agreement expired there was no way in which he could

1 mb1m "Ritenour" 128

2 have acquired stock.

3 "Q Did he talk to you about the possibility of his
4 acquiring stock at any time between April 24th and June
5 9th?

6 "A Between April --

7 "Q 1967?

8 "A No, sir.

9 "Q Do you recall what Mr. Pepper said to you when
10 he first brought up the possibility of his purchasing stock
11 after June 9, 1967?

12 "A When the program, as outlined in the letter of
13 June 30th, was being finalized, Mr. Pepper, at a meeting
14 with Mr. Lipsky and myself, asked if we had any objection
15 to his making an offer to the stockholders in conjunction
16 with the offer that John and I were making, and, to the
17 best of my recollection, my answer to Mr. Pepper was that
18 John and I were making an offer to pay 15 percent of each
19 stockholder's position, and if he made an offer it would
20 be purely his and that we saw no objection.

21 '0 Are you saying that he was not to take over any
22 part of the shares that you were thinking of buying, and
23 that if you wanted to buy additional shares, it would have
24 to be over and above that 15 percent?

25 "A Yes.

1 mb1m

"Ritenour"

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2 "Q Was 15 percent the first proportion that you
3 discussed after June 9?

4 "A Yes, sir.

5 "Q It was increased, was it not, at one point?

6 "A No, sir. 15 percent for Lipsky; 15 percent for
7 me.

8 "Q For a total of 30 percent between you?

9 "A Yes. And Mr. Pepper offered to buy 10 percent,
10 and I did not, personally, buy 30 percent or 40 percent
11 and then resell back to Lipsky or Pepper their percent.

12 "Q I understood you to say that this proposal by
13 Pepper was made after the plan to you and Mr. Lipsky had
14 been --

15 "A No, sir, it was made simultaneously with ours.

16 "Q I understand that the offer was made simultaneously.
17 I understood you to say that Pepper's proposal to you and
18 Lipsky or, shall we say, his inquiry as to whether you
19 would have any objection if he were to join you, came after
20 you had formulated the 30 percent proposal; is that correct?

21 "A Well, it had to follow our advising Mr. Pepper
22 that individually John and I would each offer to buy 15
23 percent of each of the shareholder's positions.

24 "Q After the formulation of yours and Mr. Lipsky's
25 proposals to pay between you 30 percent, did you advise

1 mb1m "Ritenour" 130

2 Mrs. Arlinghaus that you were contemplating buying that
3 percentage?

"A What percentage, the 15?

5 "Q The 30 percent between the two of you.

"A I did not advise -- oh, between us?

7 "Q Yes.

8 "A I do not recall that I spoke with Mrs. Arlinghaus
9 personally prior to her receiving this letter from Mr.
0 Pepper."

11 MR. JENSEN: The reference here I think counsel
12 will agree is to a letter dated June 30, 1967.

13 MR. O'KEEFE: Is it an exhibit?

14 MR. JENSEN: It has not been made an exhibit yet,
15 I believe. We might do it now. I think that is a good
16 suggestion.

17 (Pause.)

18 MR. JENSEN: The \$10 purchase was evidenced by
19 four writings, your Honor, and I think it would be a good
20 idea to put them all in evidence now. They are a letter
21 to Mrs. Arlinghaus as executrix from Mr. Pepper, dated
22 June 30, 1967; a letter to Mrs. Arlinghaus from Mr. Pepper,
23 dated June 30, 1967, that is addressed to her in her
24 individual capacity; a letter dated July 1, 1967 from Mr.
25 Ritenour to Mrs. Arlinghaus as executrix; and a letter from

1 mb1m "Ritenour" 131

2 Mr. Ritenour to Mrs. Arlinghaus individually, dated July
3 1, 1967. I would offer all four of them.

4 MR. O'KEEFE: What was the last one?

5 (Documents handed to Mr. O'Keefe and Mr.
6 Matthews.)

7 M. MATTHEWS: I object on the ground that these
8 do not throw any light on the issues raised in this liti-
9 gation.

10 THE COURT: Let me see them.

11 (Documents handed to the Court.)

12 THE COURT: Overruled. They may be received.

13 You have seen these letters before, haven't you, Mr.
14 Matthews?

15 MR. MATTHEWS: Oh, yes, sir.

16 THE COURT: What takes you so long to get you to
17 make a statement for the record?

18 MR. MATTHEWS: They are not in the same form as
19 the copies I had and I want to be sure they were the same
20 letters.

21 ((Plaintiff's Exhibits 6, 7, 8 and 9 for identi-
22 fication received in evidence.)

23 THE CLERK: Plaintiff's Exhibit 6 is the letter
24 to Mrs. Arlinghaus of June 30th, as executrix. Plaintiff's
25 Exhibit 7 is individually to Mrs. Arlinghaus. Plaintiff's

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2 Exhibit 8 is individually to Mrs. Arlinghaus on July 1,
3 and Plaintiff's Exhibit 9 is the letter of July 1 to her as
4 executrix.

5 THE COURT: All right. Mr. Jensen, let's go.

6 MR. JENSEN: Yes, sir.

7 Line 14, continuing on same page, 265. Let's
8 start with the answer on 11:

9 "A I do not recall that I spoke with Mrs. Arlinghaus
10 personally prior to her receiving this letter from Mr.
11 Pepper.

12 "Q To the best of your knowledge was there ever a
13 30-percent proposal submitted to Mrs. Arlinghaus by anyone?

14 "A Not to my knowledge."

15 MR. JENSEN: Page 268, line 23 is an answer:

16 "A I recall that the price formula was a suggestion
17 by Mr. Pepper."

18 MR. JENSEN: The reference here is the \$10
19 price formula.

20 "Q Do you recall either precisely or approximately
21 when he came up with that formula?

22 "A I do not.

23 "Q Can you tell me whether it was closer to June
24 9th or closer to June 30th?

25 "A I cannot tell you.

1 mblm

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2 "Q Did he have it written down when he proposed it
3 to you?

4 "A I do not recall.

5 "Q Was Lipsky there when he proposed it to you?

6 "A Yes."

7 MR. JENSEN: Page 315, line 24:

8 "Q Under the letter agreement, Mr. Pepper was to
9 buy shares for his wife at \$10 also. To your knowledge
10 did Mr. Pepper ever tell anyone that he thought himself
11 justified in buying at \$10 as distinguished from the higher
12 price which the rest of the shares would have to bring,
13 because he had rendered some service which was worth the
14 difference?

15 "A I do not have any knowledge whatsoever what was
16 said between he and the stockholders and his being able
17 to acquire stock from them individually."

18 MR. MATTHEWS: May I check on that? That is
19 page what.

20 MR. JENSEN: 316.

21 MR. MATTHEWS: All right.

22 "Q Did he ever say something to that effect in your
23 presence or to your knowledge?

24 "A No."

25 Page 365, line 5:

2 "Q Who drafted the initial draft of the Fuqua
3 contract?

4 "A I don't know.

5 "Q Do you know whether Mr. Pepper did?

6 "A I know that he did not.

7 "Q Do you know whether Mr. Pepper drafted any draft
8 of the Fuqua contract?"

9 MR. BLADES: There is a correction in this. The
10 original read: "Being on the buyer's side." It now reads:
11 "Being on the seller's side, it would not be his responsi-
12 bility."

13 MR. JENSEN: Mr. O'Keefe said, "Answer the
14 question. Do you know?"

15 "A No.

16 "Q Your answer is a little ambiguous. My question
17 was do you know whether Mr. Pepper drafted any draft of
18 the Fuqua contract? Is it your answer that you don't know
19 or is your answer that he didn't?

20 "A He did not."

21 MR. JENSEN: I am offering now into evidence the
22 telegram which I believe Mr. O'Keefe has the original of,
23 which was marked Plaintiff's Exhibit 43 for identification
24 during Mr. Ritenour's deposition which came from his files.

25 MR. MATTHEWS: I object to it because it does not

2 relate to or throw light upon any of the issues in this
3 case.

4 MR. JENSEN: Your Honor, let me read into the
5 record with respect to that exhibit the point in Mr. Riten-
6 our's deposition where it was introduced, page 238, line
7 15:

8 "Q Did any written communications pass between any
9 members of the syndicate, to your knowledge, during this
10 period of time?

11 "A I hand you a telegram, copy of a message by
12 telegram I received from Mr. Stat on June 6th."

13 THE COURT: I am going to receive it over the
14 objection of Mr. Matthews.

15 (Plaintiff's Exhibit 10 for identification
16 received in evidence.)

17 MR. JENSEN: I have finished my readings from
18 Mr. Ritenour's deposition.

19 Mr. Pepper's deposition was taken on January 30,
20 1969. It was signed by him I see on January 25, 1974.
21 It was not handed back to me again until yesterday. I
22 have marked most of the passages I want to read. I would
23 like to read those now and then clean up later on if I
24 may, your Honor. Last night I just didn't have a chance
25 to finish going through it.

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2 would like while we are still with the Ritenour deposition,
3 to spread on the record just a few things from the Ritenour
4 deposition. I think it would be a little more orderly,
5 and then we can proceed to the Pepper.

6 MR. JENSEN: It won't be a part of my case, of
7 course, your Honor, but that is understood, I take it.

8 THE COURT: Sure. There is no problem.

9 MR. JENSEN: So if this is a more orderly way
10 to proceed I have no objection.

11 THE COURT: All right.

12 MR. O'KEEFE: About six pages.

13 THE COURT: All right.

14 MR. O'KEEFE: Would you turn to page 216 of the
15 Ritenour deposition, if you don't mind my using you as a
16 proxy?

17 MR. BLADES: No.

18 MR. O'KEEFE: Page 216, line 6:

19 "Q Will you give us, please, your best recollection
20 of what transpired at the luncheon meeting on May 10? Maybe
21 you should tell us first who was there.

22 "A At the luncheon meeting on May 10, 1967, there
23 were present Mrs. Arlinghaus, Mr. Clem Arlinghaus, Mr.
24 Pepper, Mr. Lipsky, and myself. The purpose of the luncheon
25 meeting was to explain and to give our feeling as to the

2 tender offer, the results it would hopefully obtain, the
3 clarification of rumors and gossip which John and I had
4 heard about as to our threatening to quit if the tender
5 offer were not accepted, and to discuss the possibility and
6 likelihood of the tender offer being increased over \$15.

7 "Q You said that that was the purpose of the meeting.
8 Now tell us please what was said at the meeting according
9 to your best recollection. Let me ask you first: Did you
10 speak for the two of you, or did Mr. Lipsky speak for the
11 two of you at that meeting?

12 "A I spoke for myself and Mr. Lipsky spoke for him-
13 self, and we answered any questions placed with us by those
14 present.

15 "Q Who spoke first of the two of you?

16 "A I cannot recall.

17 "Q Can you recall what you said yourself about the
18 tender offer and the other matters that you mentioned?

19 "A No, I cannot recall word for word.

20 "Q I understand that.

21 "A We gave our -- I am sorry, I gave my complete
22 background history of my employment with Modern Talking
23 Picture Service and, subsequently, Modern Teleservice. My
24 understanding of the many, many conversations Mr. Arlinghaus
25 and I had about Modern Teleservice, its status, its position,

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its future, its desires, and my understanding of then
position as far as a stockholder under the arrangement of
buying stock through Mr. Arlinghaus' efforts; and what it
would mean in the event of the demise of any of the then-
existing stockholders in accordance with the existing buy-
back agreement, and that, because events occurring after
Mr. Arlinghaus' death, that the concept was entirely different,
and that the best possible way that I could accomplish my
desires of becoming a larger control position in the
corporation would be by accomplishing it through the tender
offer; and then I, in so many words, stated to Mrs. Arling-
haus most directly and to those others in attendance, that
I wanted once and for all their full understanding that
regardless of the rumors and gossip that was prevalent
that I in no way was threatening nor placing undue pressure
on anyone to accept this offer or I would quit or leave
the company.

19 "Q Did you mention Mr. Pepper as a source of the
20 rumor?

"A I do not recall and I believe I didn't.

22 " Did Mr. Pepper say anything about the rumors
23 during that conference?

"A . . . do not recall

"O Have you given us the substance of what you said?"

1 mblm

"Ritenour"

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2 "A Yes.

3 "Q What did Mr. Lipsky say?

4 "A Basically, the same as I did, only in his own
5 words, and his understanding of our original purpose and
6 reason for acquiring stock as quickly as we were financially
7 able to do so during the life of Mr. Arlinghaus.

8 "Q Did Mr. Lipsky refer also to conversations with
9 Mr. Arlinghaus?

10 "A Yes.

11 "Q Were they the same conversations that you had or
12 were they conversations between the two of them?

13 "A They had conversations where I was not present.

14 "Q Did Mr. Lipsky comment on the rumors?

15 "A Yes.

16 "Q What did Mr. Lipsky say about them?

17 "A Exactly as I did.

18 "Q Did Mr. Lipsky designate Mr. Pepper as a source
19 of the rumors?

20 "A I do not recall.

21 "Q At that time, did you know that Mr. Pepper was
22 the source of the rumors?

23 "A I don't know that I ever knew that he was the
24 source.

25 "Q Did you have any information that he was at that

1 mblm

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2 time?

3 "A No, sir.

4 "Q When did that first come to your attention?

5 "A I do not recall."

6 MR. O'KEEFE: Please go to page 220, line 7:

7 "Q It is a fact though, Mr. Ritenour, that at one
8 time you confronted Mr. Pepper with this rumor, isn't it?

9 "A Yes.

10 "Q Did he deny having said such a thing when you
11 did that?

12 "A I do not recall.

13 "Q Did Mr. Arlinghaus speak at that meeting?

14 "A I am quite sure that he did. I do not recall
15 specifically what part of the conversation he entered into.

16 "Q You have no recollection?

17 "A And to the best of my recollection, he took --"

18 MR. JENSEN: Objection, incompetent. What comes
19 after that, I move to strike it.20 THE COURT: I haven't heard it so I can't tell
21 you whether it should be struck or not.22 MR. JENSEN: He started in by quoting or relating
23 what Mr. Arlinghaus was saying at the meeting.24 MR. O'KEEFE: No, he is not quoting him. Why
25 don't you read the testimony and see?

1 mblm

"Ritenour"

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2 MR. JENSEN: That's right, he is not quoting. I
3 am sorry, but he is relating according to the late Mr.
4 Arlinghaus, he said.

5 MR. O'KEEFE: Will you take the answer subject?

6 THE COURT: Is that the substance of it, what
7 Mr. Arlinghaus said?

8 MR. O'KEEFE: It's the position he took, not
9 what he said.

10 THE COURT: Let me listen to it.

11 MR. O'KEEFE: Would you read the answer start-
12 ing on 17, please, line 17?

13 "A And to the best of my recollection he took a
14 very middle-of-the-road position in that he was there to
15 listen and find out what he could so that he could
16 undoubtedly better counsel his sister-in-law."

17 MR. JENSEN: I move to strike that as incompetent.

18 MR. O'KEEFE: May I just put in the next question
19 and answer?

20 THE COURT: He is present there. I think he can
21 answer that. It's overruled.

22 MR. O'KEEFE:

23 "Q That's what he said?"

24 "A No, he didn't say that. I said this is the
25 position he took during the luncheon."

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2 MR. JENSEN: Same objection, your Honor, incom-
3 petent.

4 THE COURT: Same ruling.

5 MR. JENSEN: I would like to have Mr. O'Keefe
6 finish the thought and read on.

7 MR. O'KEEFE: I am not finished.

8 "Q Are you talking now about something said by him
9 during the luncheon?

10 "A No. I do not recall exactly anything that Mr.
11 Arlinghaus said during the luncheon.

12 "Q Do you recall in substance what he said?

13 "A I do not, no.

14 "Q How about Mrs. Arlinghaus? What did she say
15 during the luncheon about the tender offer or the other
16 matters that you mentioned?

17 "A To the best of my recollection, she listened
18 very intently to what I said and to the information that
19 I expressed and offered no final attitude or comments.

20 "Q Did she offer some non-final comments, to use
21 your own term?

22 "A No, to the best of my recollection. I believe
23 that to the best of my recollection, the reasons for the
24 tender offer being made by John and me, and our statement
25 about that there was never any intent of threat or pressure

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2 was of vital importance to those present, but their main
3 purpose of having the meeting with John and me was to
4 explore the possibility of increasing the tender offer over
5 the \$15 price as originally offered.

6 "Q Did Mrs. Arlinghaus comment on the rumors?

7 "A Not to my recollection.

8 "Q Did she have a response to your explanation of
9 the rumors?

10 "A Not to my recollection.

11 "Q Did Mr. Arlinghaus, for that matter?

12 "A I really do not recall.

13 "Q Did Mr. Pepper?

14 "A No.

15 "Q Did Mr. Pepper participate in the conversation
16 about these matters, meaning the tender offer, and the
17 rumors?

18 "A Well, I would have to say that in a meeting of
19 this type, that all the persons in attendance at one time
20 or another made a comment or a statement, but I cannot
21 recall specifically what one person said at one time.

22 "Q I am not surprised, Mr. Ritenour. I am not
23 asking for specifics. I am asking for your best recollec-
24 tion now of what Mr. Pepper contributed to that conversa-
25 tion.

2 "A I don't know what he contributed.

3 "Q You have no recollection of anything said by
4 Pepper during the Luncheon Club conference?

5 "A No, I don't."

6 MR. O'KEEFE: That is the portion I wanted to
7 have read in, your Honor. Your Honor, we have spread a
8 number of things on the record. I think it would be and
9 I move to deem the entire deposition of Ritenour as an
10 exhibit. I don't think it necessary to encumber the record
11 but I think it ought to all be marked. I don't know where
12 the original is. It was furnished to Mr. Jensen.

13 MR. JENSEN: Yes, we have it. I don't mind mark-
14 ing it. You are asking to mark it for identification?

15 MR. O'KEEFE: No, I am asking to put it in as an
16 exhibit.

17 MR. JENSEN: I would have, I am sure, numerous
18 objections to matters in it, your Honor, and it would take
19 a long time for me to go through it and make my objections. I
20 don't think that is a feasible or practical suggestion. It isn't
21 any part of my case anyway. Mr. Ritenour is here. If Mr.
22 O'Keefe wants his testimony in his case, in defendants'
23 case, I think he should call Mr. Ritenour.

24 MR. O'KEEFE: Your Honor, the rule provides that
25 the deposition can be read by any party.

2 Page 4, line 10:

3 "Q Have you been licensed to practice law in any
4 other state or district?

5 "A What do you mean by 'district'?

6 "Q The District of Columbia, Mr. Pepper.

7 "A Oh, no."

8 Page 7, line 19:

9 "Q Do you know when Mr. DeWitt met Mr. Arlinghaus
10 precisely or approximately for the first time?" -- and the
11 reference here, your Honor, is to Mr. Benjamin DeWitt
12 who was the senior member of Mr. Pepper's firm.

13 "A In about the late '20s or early 1930s.

14 "Q At first did Mr. DeWitt do all of the work that
15 was done by the firm for Mr. Arlinghaus?

16 "A No.

17 "Q From the outset you did part of it?

18 "A I think I did substantially all.

19 "Q Of Mr. Arlinghaus' work?

20 "A Yes."

21 Page 14, line 24:

22 "Q Was the firm of DeWitt, Pepper & Howell ever
23 retained to act as counsel for Teleservice?

24 "A Yes.

25 "Q When did that first happen?

1 mb1m "Pepper" 149

2 "A At the inception of the corporation.

3 "Q Was that in 1956?

4 "A Yes."

5 Page 19, line 18:

6 "Q When you became the attorney for the estate of
7 Frank E. Arlinghaus upon the death of Mr. DeWitt was a
8 written retainer entered into?

9 "A No retainer was entered into in writing.

"Q Was an oral retainer made?

11 "A No.

12 "Q How did you come to be retained then?

13 "A I continued doing what I had done theretofore

14 "Q Did you file or cause to be filed in the Surrogate's
15 Court in New Jersey a paper reflecting the fact that you had
16 become the attorney for the estate?

17 "A No.

18 "Q Did you retain in Jersey counsel to act for the
19 estate?

20 "A No

2) 'Q Did someone?

22 "A No.

Mr. Rosen said, "Not to your knowledge," and the witness repeated:

25 "A Note to my knowledge."

1 mblm

"Pepper"

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2 promptly.

3 "Q Yes, now my question was whether while this
4 agreement was pending you had an expectation of realizing
5 something from it?

6 "A I had a hope."

7 Page 160, line 16:

8 "Q There came a time in June when Messrs. Ritenour
9 and Lipsky proposed to buy Teleservice stock at \$10 a
10 share, is that right?

11 "A Yes.

12 "Q When was that?

13 "A Before June 30th.

14 "Q Do you recall the date when you first heard of such
15 an offer or proposed offer?

16 "A No.

17 "Q Do you recall the occasion when you first dis-
18 cussed it or talked to anyone about it?

19 "A No.

20 "Q When did you first hear of the tender offer as
21 far as your present recollection is concerned?22 "A Well, it was certainly between June 9th and
23 June 30th.

24 "Q Was it in a conversation with someone?

25 "A Well, it was probably in a conversation with

1 mb1m

"Pepper"

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2 would be one of the purchasers?

3 "A Correct.

4 "Q And from the outset was it thought that Mr.
5 Lipsky would be another?

6 "A Yes.

7 "Q And from the outset it was the thought that Mrs.
8 Pepper would be the third purchaser?

9 "A Right.

10 "Q When was the proposal first made that Mrs. Pepper
11 should become a purchaser?

12 "A The exact time? I can't answer.

13 "Q It was made by you, I take it?

14 "A Well, it was an investment opportunity which I
15 declined and I suggested that my wife would take it.16 "Q How was the investment opportunity made to you,
17 Mr. Pepper?18 "A In the course of discussions with Messrs. Ritenour
19 and Lipsky.

20 "Q Who made it available to you?

21 "A Those two gentlemen.

22 "Q At your suggestion?

23 "A No.

24 "Q What did they say when they made it available
25 to you?

1 ||| mb1m "Pepper"

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2 "A Mr. Ritenour stated that he was having difficulty
3 in getting up enough money to purchase the stock, that
4 Mr. Lipsky had to be assisted by him, and that he was also
5 concerned about paying for services in connection with the
6 sale of Modern Teleservice assets.

7 "Q At that point you were talking about a 40-percent
8 purchase, were you not?

9 "A Before that conversation

10 "Q Before that conversation you were talking in
11 terms of a 40-percent purchase?

"A By Ritenour acting on behalf of his wife and
John Lipsky

14 "Q Mr. Ritenour told you he couldn't get up the
15 money to buy 40 percent?

16 "A Correct

17 "Q. Did he ever propose to buy 30 acres or so

"A... Well, he did buy 30 percent of it at one

19 "Q Did he ever propose a purchase of 30 percent
20 from the sellers?

21 | P a g e

22 "Q You bought 10 percent or your wife did, didn't
23 you Mr. Bonner?

24 "A YOGA

"O I take it that Mr. Ritengur could raise the amount

1 mb1m "Pepper" 158

percent but not the additional 10 percent to make 402

3 "A That's correct.

4 "Q Did you ever propose that Mr. Ritenour limit his
5 purchase to 30 percent?

6 "A No."

7 MR. JENSEN: That is as far as I got in my mark-
8 ing. I may have to add a few pages later on.

THE COURT: All right.

10 MR. JENSEN: May I have a few minutes to go and
11 locate Mrs. Arlinghaus?

12 THE COURT: Surg.

13 (Pause.)

14 MR. JENSEN: I would like to have Mrs. Arlinghaus
15 take the stand, your Honor.

16 MR. MATTHEWS: May I before leaving Mr. Pepper's
17 testimony, offer the entire testimony in evidence as an
18 exhibit. The original volume is here.

19 MR. JENSEN: Would your Honor like to do it on the
20 same basis we did with Mr. Ritenour?

THE COURT: We will do it on the same basis. He
hasn't had an opportunity to examine it and put in his
objections so I am taking it as an exhibit with the proviso
that at the end of the trial he may furnish me with such
objections as he may have.

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"Pepper"

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2 R.Arlinghaus-direct

2 MR. MATTHEWS: Entirely satisfactory.

3 MR. O'KEEFE: I have no objection.

4 THE COURT: All right.

5 (Defendant Pepper's Exhibit F for identification
6 received in evidence.)7 ROSALIE M. ARLINGHAUS, the plaintiff
8 called as a witness in her own behalf, being first
9 duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. JENSEN:

12 Q Frank Arlinghaus was your husband?

13 A Yes, sir.

14 Q When were you married?

15 A In June, 1942.

16 Q Do you remember the date?

17 A The 13th of June.

18 Q You became the executrix of Mr. Arlinghaus' will
19 upon Mr. Arlinghaus' death?

20 A Yes, sir.

21 Q Who was the attorney for the estate?

22 A The firm of DeWitt, Pepper & Howell.

23 Q Who in the firm did the actual work for the estate?

24 A Mr. Sidney Pepper.

25 Q For how long did Mr. Pepper continue as attorney

1 mblm R. Arlinghaus-direct 160

2 for the estate?

3 A Until the 21st of May, 1968.

4 Q What happened at that time?

5 A I dismissed Mr. Pepper.

6 Q During this period of time from your husband's
7 death until May 1968, was Mr. Pepper also your personal
8 attorney?

9 A Yes, sir.

10 Q Did you have any other attorney at any time
11 during that period for legal advice?

12 A No, sir.

13 Q Did you place trust and confidence in Mr. Pepper
14 throughout this period?

15 A Yes, sir.

16 Q Approximately when did you stop doing so?

17 A In May, about the 21st, 1968.

18 Q Do you know whether Mr. Pepper was the attorney
19 for Teleservice?

20 A I recall he was.

21 Q And knew it at the time?

22 A Yes, sir.

23 Q Were you yourself ever an employee of Teleservice?

24 A No, sir.

25 Q Or an officer of Teleservice?

1 mb1m

R. Arlinghaus-direct

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2 they were in?

3 A Teleservice was in the distribution of TV films
4 to radio stations, I believe.5 Q You meant Burnett. Do you know what Burnett's
6 business was and what Teleservice did for Burnett?

7 A No, sir.

8 Q How did you spend your time after your husband's
9 death?

10 A Running my home, and my three young children.

11 Q Was that all you did? Were you engaged in any
12 kind of employment?13 A I did some volunteer work at the Medical Center
14 in Long Branch, New Jersey in the field of rehabilitation
15 and physical science.

16 Q Was this a full-time job?

17 A No, that was part time.

18 Q What background did you have, to do that kind of
19 work?20 A M.A. graduate from Boston University in Rehabili-
21 tation and Physical Therapy.

22 Q Is that the name of your degree?

23 A My degree is in education with a major in physical
24 therapy.

25 Q When did you graduate from Boston University?

4 A Yes, sir.

5 Q Did you know that the stock was subject to a
6 Voting Trust Agreement?

7 A I recall that title.

8 Q Do you know the provisions of the agreement, what
9 it provided for?

10 A I don't recall.

11 Q Do you know what a Voting Trust Agreement is?

12 A No, I don't.

13 Q Did you sign this one? Do you know whether you
14 signed that agreement?15 A Well, if I was supposed to have signed it, I
16 guess I would have been directed to sign it.17 Q You have no recollection then. All right. I
18 draw your attention to the time in April of 1967 when Mr.
19 Ritenour made a proposition to you to buy stock, Teleservice
20 stock, Teleservice stock from you, and I ask you whether
21 prior to that offer -- and I think I should give you the
22 letter which I am talking about -- Exhibit 1. Please take
23 this in front of you. It's dated April 25, 1967, right?

24 A Yes, sir.

25 Q I ask you whether, prior to that time, you recall
having formed any intention, having decided or formed an
intention to sell any part of your Teleservice stock.

1 mblm

R. Arlinghaus-direct

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2 MR. O'KEEFE: Objection, your Honor.

3 THE COURT: I will sustain it.

4 MR. O'KEEFE: Excuse me.

5 THE COURT: I sustained it.

6 Q Had you?

7 THE COURT: I must say, Mr. O'Keefe, though,
8 my hearing becomes difficult when you don't rise
9 to object.

10 MR. O'KEEFE: I am sorry.

11 THE COURT: All right. Go ahead, Mr. Jensen.

12 Q Do you recall having any discussions with any-
13 body prior to that time about whether the estate's Teleser-
14 vice stock should be sold?

15 A I don't recall.

16 Q Will you tell us, do you recall, looking at the
17 letter, whether you saw or received that letter?

18 A I recall I did.

19 Q And did you see it at or about the time that it
20 was written?

21 A Yes.

22 Q Whom did you speak with about the letter when
23 you saw it?

24 A Mr. Pepper.

25 Q Would you tell us your best recollection as to

1 mb1m

R. Arlinghaus-direct

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2 what Mr. Pepper said to you when you spoke to him about
3 this letter?

4 A Well, Mr. Pepper informed me that Mr. Ritenour
5 and Mr. Lipsky were very desirous of acquiring stock, and
6 if they didn't, they would leave; and with them would go
7 their pertinent accounts and I'd be left with wallpaper.

8 Q Did he tell you anything about their intention
9 in that respect?

10 A That they would leave; they were not under con-
11 tract.

12 MR. JENSEN: Your Honor, for your information I
13 would like to have the witness use her deposition to refresh
14 her recollection. She was deposed in 1969.

15 MR. O'KEEFE: No indication that she needs her
16 recollection refreshed.

17 MR. JENSEN: I think she is entitled to use any-
18 thing that might refresh her recollection.

19 THE COURT: Only if it's shown that she has no
20 recollection.

21 MR. JENSEN: All right.

22 Q Do you recall anything more of that conversation,
23 Mrs. Arlinghaus?

24 A Following this, the receipt of this letter, a
25 luncheon was set up.

1 mblm

R. Arlinghaus-direct

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2 Q Yes, but I am really directing your attention now
3 to the conversation with Mr. Pepper, and I am asking you
4 whether you recall anything more of that conversation.

5 A No, I don't recall.

6 Q All right.

7 MR. JENSEN: At this point I ask that the witness
8 be permitted to refresh her recollection with her deposi-
9 tion, to see whether she can recall anything more about
10 that conversation.

11 THE COURT: Mr. O'Keefe?

12 MR. MATTHEWS: Mr. Jensen, can you speak just a
13 little bit louder? I can't hear what you say.

14 MR. JENSEN: All right.

15 MR. MATTHEWS: Could I have that last question
16 read back.

17 Q Mrs. Arlinghaus, do you recall being deposed in
18 1969 about these matters?

19 A Excuse me?

20 Q Do you recall testifying about these matters on
21 a deposition in 1969? Do you recall Mr. Rosen asking you
22 questions at a deposition?

23 A I'd have to refresh my memory.

24 Q There is a copy of the deposition next to you.

25 THE COURT: All right, you may refresh your

1 mblm R. Arlinghaus-direct 169

2 recollection.

3 Q Would you please --

4 THE COURT: Do you understand what we are talking
5 about when we say "refresh your recollection"? You are to
6 read that statement, and then, not read it to your counsel
7 as an answer. If it refreshes your recollection, fine. If
8 it doesn't refresh your recollection, fine, also; but you
9 are not to read that answer to Mr. Jensen.

10 THE WITNESS: All right.

11 Q Would you please locate in that deposition the
12 conversation that you had with Mr. Pepper about these
13 matters?

14 A May I ask for a page or --

15 Q Maybe it would be faster if I find the page.

16 THE COURT: I think you ought to help her.

17 Q Mrs. Arlinghaus, will you read the testimony
18 quoted at page 33 and see whether that refreshes your
19 recollection as to the conversation with Mr. Pepper.

20 THE COURT: Does it refresh your recollection?

21 Q Mrs. Arlinghaus, don't read from the deposition.

22 Read it, put it aside, and tell us how much you now remember
23 about it.

24 A Yes, sir.

25 Q All right. Will you tell us whether you remember

1 mblm R. Arlinghaus-direct 170

2 anything more about that conversation with Mr. Pepper now?

3 A That they wanted stock and they would take
4 accounts with them and that was the demand that was made
5 on me.

6 Q By whom?

7 A By Mr. Ritenour and Mr. Pepper and Mr. Lipsky.

8 Q When you were told that they wanted to do this,
9 did you meet?

10 A Yes, sir.

11 MR. O'KEEFE: Objection.

12 THE COURT: Overruled.

13 Q Did Mr. Pepper ever talk to you about that sub-
14 ject matter later on?

15 A There was a meeting regarding this.

16 Q I want you to tell about that meeting but before
17 we get to that, please tell me whether Mr. Pepper ever
18 again came back to this subject matter of what Mr. Ritenour
19 and Lipsky would do after that first conversation you had.
20 Did he ever --

21 A Well, he repeatedly told me that they would leave,
22 and taking their pertinent accounts and important accounts
23 with them, and I'd be left with wallpaper or film-winding
24 machines

25 Q Did anyone use those expressions to you?

2 A Yes.

3 Q Who did?

4 A Mr. Pepper.

5 Q During what period of time did Mr. Pepper repeat
6 these statements?

7 A Well, from, say, April, when the letter was
8 received, until Sonderling purchased the stock.

9 Q Do you recall when that was, Mrs. Arlinghaus?

10 A That was in April, '68.

11 Q Do you as you sit here recall when you sold your
12 stock, Mrs. Arlinghaus? Let me make it more clear: Eventually,
13 you did sell your stock to Messrs. Lipsky and Ritenour,
14 isn't that right?

15 A Yes.

16 Q Part of it. All of your own, did you?

17 A All of my own.

18 Q And part of the estate's?

19 A Yes.

20 Q Do you recall when you did that or do you know
21 without reference to anything, do you know when you did it?

22 A ? I don't recall the date.

23 Q Well, get to it. Did you find out, did you
24 see in the letter that Mr. Ritenour wanted to pay \$15 a
25 share?

1 mblm

2 R. Arlinghaus-direct

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3 to then carry that information back to the gentlemen.

4 Q Do you know that the price was in fact raised
5 to 20?

6 A Yes.

7 Q Did you have anything to do with that yourself?
8 In other words, did you speak to Mr. Ritenour or Mr. Lipsky
about that?

9 A I don't recall.

10 Q At that point had anybody told you what the
11 value of Teleservice, your Teleservice holding was?

12 A No.

13 Q Did you have an opinion about it yourself?

14 A No.

15 Q But you did agree to sell at \$20, didn't you, Mrs.
16 Arlinghaus?

17 A Yes.

18 Q What was your reason for agreeing to sell to Mr.
19 Lipsky and to Mr. Ritenour at that time?

20 MR. O'KEEFE: Objection.

21 THE COURT: I will sustain the objection.

22 Q Would you tell me what considerations you weighed,
23 in deciding to sell to Mr. Ritenour and Lipsky?

24 MR. O'KEEFE: I object. It's the same question.

25 MR. JEISSEN: Your Honor, under our -- in our

1 A Yes.

2 Q Did that deal go through, do you know? Did you
3 sell all of your stock for \$20 back in May?

4 A No, that didn't go through.

5 Q Do you have any personal knowledge of the reason
6 why it didn't go through?

7 A No, I don't.

8 Q Who reported to you on these matters?

9 A Mr. Pepper.

10 Q There was a subsequent offer by Messrs. Ritenour
11 and Lipsky, is that right, to buy your stock at \$10 a
12 share?

13 A Yes.

14 Q Who brought that offer to you?

15 A I recall that was addressed to me, a letter.

16 Q Yes. By whom?

17 A I'd like to see it to refresh my memory. I
18 believe it was from Mr. Ritenour. I could be mistaken.

19 MR. JENSEN: I show the witness Exhibits 6 and
20 7.

21 A Correction, that was from Mr. Pepper; both
22 letters.

23 Q You are looking at the two exhibits, are you,
24 Mrs. Arlinghaus?

1 mb1m

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2 A Yes.

3 Q Do you recall seeing them?

4 A Yes.

5 Q Was Mr. Pepper the first one to tell you about
6 that \$10 offer?

7 Q Yes.

8 Q Did you ever talk before the sale to Mr. Ritenour
9 about it, before you put your signature on that exhibit?

10 A I don't recall.

11 Q Would you look now at Exhibits 3 and 9. Do
12 you remember seeing those letters from Mr. Ritenour to you
13 personally and as the executrix?

14 A Yes.

15 Q You agreed to sell, did you not, at \$10 a share?

16 A Yes.

17 Q With whom did you deal in that connection? Did
18 you deal with Mr. Ritenour?

19 A I recall it was Mr. Pepper.

20 Q Did you, when you made your decision now to sell
21 at \$10, did you have in mind what Mr. Pepper told you about
22 Mr. Ritenour's and Mr. Lipsky's intentions, if you should
23 not sell?

24 A Excuse me, please?

25 Q I am sorry. Would you read the letter back,

1 mb1m R. Arlinghaus-direct 178
2 please.

3 (Question read.)

4 Q Do you understand the question?

5 A Yes. I didn't quite hear. Yes, sir.

6 Q By that time, had anyone told you the value, what
7 the value was of your stock holdings?

8 A No, I don't recall.

9 Q Did you know what it was?

10 A No, I didn't.

11 Q When did you first hear that this time Mrs.
12 Pepper was to buy some of the stock?

13 A When I received the letter.

14 Q Which letter are you referring to? Would you
15 read off the exhibit number, please?

16 A There was one that -- this is the June 30th
17 letter.

18 Q Yes, well, I should ask you: Is that the one you
19 have in mind?

20 A Yes, I know hearing of Miriam Pepper came on
21 a letter to my attention.

22 Q Which exhibit number are you talking about?

23 A 6.

24 Q Did you ask Mr. Pepper about that?

25 A Yes, I was quite surprised, an I asked Mr. Pepper.

1 mblm R. Arlinghaus-direct 179

2 Q What did Mr. Pepper say about that?

3 A Mr. Pepper told me that Mr. Ritenour could sell
4 stock to anybody, even his maid.

5 Q What did you do with those letters? You signed
6 them, did you not?

7 A Yes.

8 Q And you sent them on. Did you have an understand-
9 ing with Mr. Pepper as to when that sale of your stock and
10 the 40 percent of the estate's stock should become final?

11 A Yes, that was contingent on the signatures of
12 the other stockholders.

13 Q Who was it who made the decision as to when that
14 stock was actually transferred? Did you have anything to
15 do with that?

16 A No, sir.

17 Q Did you leave that to Mr. Pepper?

18 A Yes.

19 Q As you sit here, do you know when that stock was
20 transferred?

21 A No, I don't recall.

22 Q Have you ever known?

23 A I don't recall now.

24 Q Look at the letter, please, the first paragraph
25 in each letter explains that you were to get \$3 cash and

1 mb1m R. Arlinghaus-direct 180

\$7 in the way of promissory notes; is that right?

3 A Yes.

4 Q In the first place, did you get your \$3 a share,
5 do you know?

6 A Yes.

7 Q And were the notes paid eventually?

8 | A Yes.

9 Q Who had the notes? Did you?

10 A No, Chase Manhattan Bank.

11 Q Subsequent to your sale of all of your stock and
12 part of the estate stock, did it come to your attention that
13 a purchaser for the entire company had been found?

14 A Yes.

Q What was the name of that purchaser?

A I recall it was Fuqua.

17 Q Who told you that?

18 A Mr. Pepper.

19 Q When were you told that?

20 A I believe it was in the fall, November or Decem-
21 ber of '57.

22 Q Did you have anything to do with that transaction?

23 A Not that I recall.

Q Did you see the Fuqua contract?

25 A I don't recall seeing it.

2 Q What happened to the Fuqua sale?

3 A That didn't materialize.

4 Q Do you know the reason?

5 A No, I don't.

6 Q Who told you it didn't materialize?

7 A Mr. Pepper.

8 Q Did it come to your attention that after that
9 another purchaser was found?

10 A Yes.

11 Q That was --

12 A Sonderling Broadcasting Company.

13 Q Did the sale to Sonderling materialize?

14 A Yes.

15 Q Do you know what happened to your remaining shares
16 in Teleservice?

17 A They were I guess "transferred" is the word.

18 Q Did you get something for them?

19 A Yes; stock.

20 Q In what?

21 A Sonderling.

22 Q I am showing you now what has been marked Plain-
23 tiff's 11 for identification: a letter signed by a number
24 of people including you, dated November 17 1967. I ask
25 you whether you remember that. Do you remember signing

1 that?

3 A Yes, I recall.

4 Q Who asked you to sign it?

5 A Mr. Pepper.

6 Q What does it mean? Would you read it, please?

7 MR. JENSEN: Before the witness does that, I
8 should offer it into evidence.

9 MR. O'KEEFE: No objection, your Honor.

10 THE COURT: Mr. Matthews?

11 MR. MATTHEWS: No objection.

12 THE COURT: All right, it may be received.

13 (Plaintiff's Exhibit 11 for identification
14 received in evidence.)

15 Q Would you please read Exhibit 11?

16 A To myself?

17 THE COURT: I assume so, yes.

18 Q What does it mean to you?

19 MR. O'KEEFE: Objection, your Honor.

20 THE COURT: It speaks for itself.

21 MR. JENSEN: I think the witness' understanding
22 of it is important.

23 MR. O'KEEFE: The paper is in evidence, your
24 Honor.

25 MR. JENSEN: Yes. I am not trying to prove what

1 mbm

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2 it means, your Honor. I am getting at quite a different
3 point.

4 THE COURT: I have already sustained the
5 objection.

6 Q Do you remember reading it at the time that you
7 signed it, Mrs. Arlinghaus?

8 A Yes.

9 Q Did you understand it at the time? Did it mean
10 anything to you at the time?

11 A No, it didn't.

12 Q Why did you sign it?

13 A I didn't understand -- well I was supposed to
14 sign it.

15 Q Who said so?

16 A Mr. Pepper.

17 MR. O'KEEFE: Your Honor, may I bring to mind
18 the continuing objection that I had yesterday.

19 THE COURT: Yes.

20 MR. O'KEEFE: And may I have your understanding
21 that it does continue?

22 THE COURT: It does continue.

23 MR. O'KEEFE: Thank you.

24 Q Please look now at Exhibit 7 and read it.

25 MR. O'KEEFE: Is there a question pending?

1 mblm R. Arlinghaus-Direct/cross 185

2 his wife?

3 A No, sir.

4 Q Or himself for that matter.

5 A No, sir, he didn't.

6 Q Now I draw your attention to a date 17 days after
7 the May 21st date that you mentioned. I draw your attention
8 to June 7, 1968, which was the Friday. Do you recall that
9 day?

10 A Yes.

11 Q I ask you whether, as of that time, anyone had
12 advised you that you might have or had any such legal
13 claim against Messrs. Ritenour and Lipsky or Mr. Pepper?

14 A No, sir.

15 MR. JENSEN: That is all I have, your Honor.

16 THE COURT: Mr. O'Keefe.

17 CROSS-EXAMINATION

18 BY MR. O'KEEFE:

19 Q Mrs. Arlinghaus, up to the time, June 30, 1967,
20 the day upon which you approved Plaintiff's Exhibit 7
21 which you have before you, did the defendant, Mr. Ritenour,
22 ever threaten you with resignation as an officer of Modern
23 Teleservice?

24 A Personally? No.

25 Q Did the defendant, Mr. Lipsky?

2 A Personally? No.

3 Q Ever threaten you with resignation as an officer
4 of Modern Teleservice?

5 A Personally? No.

6 Q Between June 30, 1967 and August 8, 1968, which
7 was the date of the sale of the Modern Teleservice stock
8 to the Sonderling Broadcasting Company, did the defendant,
9 Mr. Ritenour, ever threaten you with resignation from the
10 company?

11 A Personally? No.

12 Q Did Mr. Lipsky ever threaten you?

13 A Personally? No.

14 Q You testified, if my notes are correct, that
15 following your husband's death you spent your time running
16 your home, taking care of your children, volunteering at
17 a hospital in Long Branch. Is that so?

18 A I have a correction. It wasn't volunteer. I
19 was paid for my services on a part-time basis at the medical
20 center.

21 Q Did that payment represent your income for this
22 period of time '64, '65, '66, after Mr. Arlinghaus died?
23 Is that how you obtained income, by working in the Long
24 Branch hospital?

25 A That made a contribution to my income.

1 mb1m R. Arlinghaus-cross 187

2 Q What were the other sources of your income?

3 A The dividend from two companies: Modern
4 Teleservice and Modern Talking Picture Service.

5 Q Did you take any vacations during this period of
6 time?

7 A Yes.

8 Q Where did you go?

9 A Oh, I'd have to refer to a calendar for that.

10 Q Do you have a calendar?

11 A I don't have it with me.

12 Q Does this calendar refresh your recollection at
13 all?

14 A Yes.

15 Q Do you recognize the calendar?

16 A Yes, sir.

17 Q Copy of the calendar. Is it yours?

18 A Yes, sir.

19 MR. JENSEN: Are you talking about the 1967 calen-
20 dar?

21 MR. O'KEEFE: That's what it is.

22 MR. JENSEN: Of which you received a copy from me.

23 Q Does that help you answer that question?

24 A Yes.

25 Q What would be the answer, based on your

1 mblm

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2 recollection being refreshed?

3 A Well, the holiday would be in January '68.

4 Q Do you remember where you went?

5 A I was on the ship "Argentina."

6 Q Where did the ship "Argentina" go?

7 A A South American cruise.

8 Q How long did you spend on that cruise?

9 A I would have to -- I think I recall it was about
10 40 days, 47 days, 37 days.

11 Q It left in January of 1968?

12 A Yes, sir, as best I recall.

13 Q I show you a letter dated March 12, 1968,
14 addressed to you as a passenger on the "S.S. Argentina,"
15 sent by Mr. Pepper, and I ask you if you recall receiving
16 that letter.17 MR. JENSEN: What deposition exhibit number is
18 that?19 MR. O'KEEFE: It's stamped Defendant's Exhibit
20 L for identification, December 30, 1968.21 Q Do you recall receiving that letter in March,
22 1968?

23 A Yes, sir.

24 Q Did you receive it while you were aboard the ship?

25 A I would presume so because that's where the address

1 mb1m D. Arlinghaus-cross 189
2 to me is.

3 Q Does that refresh your recollection that at least
4 on March 12, 1968, having left in January of 1968, you were
5 still on the cruise?

6 | A Yes.

7 Q Was it your habit to take that type of cruise
8 while Mr. Arlinghaus was alive?

9 A No, sir.

10 Q Going to the offer made to you by the letter of
11 April 25, 1967, Plaintiff's Exhibit 1 for identification,
12 is it your testimony that that is the first indication you
13 had that Mr. Ritenour and Mr. Lipsky were interested in
14 acquiring stock in Modern Teleservice?

15 A Excuse me, sir, may I have the date that you
16 mentioned?

17 Q April 25, 1967, Plaintiff's Exhibit 1 in evidence
18 in this trial. See if I can help you, if you have it
19 there. There it is, you have it (Indicating).

20 Was that the first indication you had that Mr.
21 Ritenour and Mr. Lipsky were interested in purchasing
22 stock in this corporation?

23 A As best I recall, sir.

24 Q While Mr. Arlinghaus, your husband, was alive,
25 did he discuss business matters with you at all?

1 mb1m R. Arlinghaus-cross 190

2 A Mr. Arlinghaus and I would discuss the events of
3 the day as was common, I presume, with most husbands and
4 wives; if a day was a good day or successful or not and
5 so on.

6 Q And in those normal conversations, did Mr.
7 Arlinghaus occasionally mention to you from time to time
8 that Mr. Ritenour was working at the company and Mr. Lipsky
9 was out on the West Coast?

10 A Yes.

11 Q And did it come to your knowledge or attention
12 that your husband, Mr. Arlinghaus, had made available shares
13 of stock to Mr. Ritenour while your husband was still
14 alive?

15 A I don't recall that.

16 Q Do you have any memory of your husband saying
17 that Mr. Ritenour and Mr. Lipsky became shareholders?

18 MR. JENSEN. Objection.

19 THE COURT: Sustained.

20 Q Did there come a time when you did know that Mr.
21 Ritenour and Mr. Lipsky were shareholders in Modern Tele-
22 service?

23 A Yes.

24 Q When was that?

25 A I do not recall exactly when.

2 Q Do you recall whether it was before or after
3 you received this letter of April 25, 1967?

4 A It was before.

5 Q Do you know how on the occasion before April
6 25, 1967, this information came to you?

7 A No, I don't recall.

8 Q Did you have any conversations with Clemens
9 Arlinghaus before April 25, 1967, in which Clemens Arling-
10 haus told you that he understood that Mr. Ritenour and Mr.
11 Lipsky were going to make an offer for the purchase of all
12 of the shares in Modern Teleservice?

13 MR. JENSEN: Objection.

14 THE COURT: What is the objection?

15 MR. JENSEN: Incompetent.

16 THE COURT: Overruled. You may answer. You want
17 to read the question back.

18 (Question read.)

19 A I don't recall, sir.

20 Q When you got this letter of April 25, 1967, how
21 did you receive it? Did it come in the mail?

22 Plaintiff's Exhibit 1, to the shareholders of
23 Modern Teleservice, did you receive that in the mail at
24 your home?

25 A I don't recall whether I did via the mail or

2 whether it was given to me by Mr. Pepper or Mr. Ritenour,
3 frankly.

4 Q So you don't remember at all how you received it?

5 A Not the method in which it came to my attention.

6 Q Do you remember that you received it?

7 A Yes, sir.

8 Q What did you do after you received it?

9 A I read it and I had a discussion with Mr. Pepper
10 about it.

11 Q Was Mr. Pepper the only person you discussed
12 this letter with after you received it?

13 A Best I recall, sir.

14 Q Do you recall going to lunch on May 3rd, 1967 at
15 Charlie O's in New York City with Mr. Pepper and Mr.
16 Vickers? That would be a week before the luncheon at
17 Radio City. Did you come into New York and have a lunch
18 at Charlie O's with Mr. Vickers and Mr. Pepper?

19 A I don't recall that, sir.

20 Q Do you remember a Mr. Vickers?

21 A Yes, sir.

22 Q Who is he?

23 A Mr. George Vickers is an accountant.

24 Q For whom is he accountant?

25 A At what date, sir?

2 Q In 1967, April and May.

3 A I would have to verify whether he was still
4 employed with Main and Lafrentz or had he become treasurer
5 of Modern Talking Picture Service.

6 Q There was a time he was accountant for Modern
7 Talking Picture Company; do you remember that?

8 A He was treasurer of Modern Talking Pictures.

9 Q Was he a certified public accountant?

10 A Best I recall, he was.

11 Q Did he render you personal advice from time to
12 time?

13 A Yes.

14 Q And did you ever have a lunch with him and Mr.
15 Pepper at any time, do you recall?

16 A Possibly, but I don't recall the May 3rd that
17 you asked me about.

18 Q Do you ever remetaber having lunch with Mr. Pepper
19 and Mr. Vickers?

20 A Yes.

21 Q And that, whatever lunch it is you remember,
22 was there a discussion between Mr. Vickers, the accountant
23 and treasurer of Modern Talking Picture Service; and Mr.
24 Pepper, the attorney; and yourself, about this offer of
25 April 25, 1967?

2 A I don't recall.

3 Q When you went to the luncheon at Radio City, did
4 you go there by yourself on May 10, 1967? You went to a
5 lunch--if your memory is failing--you went to a lunch with
6 Mr. Pepper, Mr. Ritenour, Mr. Lipsky, Clemens Arlinghaus and
7 yourself. That was on May 10, 1967.

8 A That's right; yes, sir.

9 Q My question was: When you went to the restaurant,
10 did you go by yourself?

11 A Yes.

12 Q Were they all there when you got there?

13 A Well, I went by myself because I came from South
14 Jersey.

15 Q Yes?

16 A That is what you are referring to?

17 Q When you got there--you came by yourself, you
18 said that --were you the first one there or had they pre-
19 ceded you?

20 A I don't recall whether I was the first one.

21 Q Do you know what time you arrived?

22 A About the noon hour, luncheon hour.

23 Q How long did the luncheon take?

24 A Hour-and-a-half, two hours, I believe. I recall
25 we had left by 3:00 o'clock, quarter of 3:00.

2 Q You testified: at the beginning of my conversa-
3 tion that neither Mr. Ritenour nor Mr. Lipsky personally,
4 you put it, ever told you they would resign. At that luncheon
5 did anyone tell you that Mr. Ritenour and Mr. Lipsky would
6 resign while Mr. Ritenour and Mr. Lipsky were in your
7 presence?

8 A I don't recall.

9 Q Did you inquire of Mr. Ritenour or Mr. Lipsky
10 whether or not it was true that they were going to resign
11 if this offer was not acted on?

12 A I did at a later date, sir.

13 Q What date?

14 A I don't recall the date, but the luncheon was in
15 Springfield, New Jersey.

16 Q At the Baltusrol Golf Club?

17 A Baltusrol, yes.

18 Q That is December, a little later?

19 A Yes.

20 Q Let's wait. We will get there in time.

21 A Well, that's the time I asked them.

22 Q So at the luncheon anyhow on May 10th at least,
23 neither Mr. Ritenour, Mr. Lipsky or anybody else said that
24 Mr. Ritenour and Mr. Lipsky would quit if this offer was not
25 acted on. Is that so?

2 A I recall so, yes.

3 Q Excuse me.

4 A No one said. That's the answer. I don't recall
5 anyone saying that.

6 Q When the luncheon was over, where did you go?

7 A I went down to exit the building with Mr. Pepper
8 and Mr. Clem Arlinghaus.

9 Q And then where did you go?

10 A Home.

11 Q How long after you left the lunch did you start
12 to go home?

13 A There was a conversation of approximately 45
14 minutes in the basement of Radio City -- Mr. Pepper, Mr.
15 Arlinghaus and myself.

16 Q Mr. Clemens Arlinghaus, your brother-in-law?

17 A Yes, sir.

18 Q How long did that conversation take place?

19 A Best I recall, about 40 minutes.

20 Q What did your brother-in-law, Mr. Clemens Arling-
21 haus tell you, say to you, on that occasion?

22 MR. JENSEN: Objection.

23 THE COURT: Overruled.

24 Q You may answer that question. Do you want it
25 read back to you?

2 THE COURT. What did your brother-in-law say to
3 you on that occasion?

4 THE WITNESS: Well, Mr. Clem Arlinghaus felt as
5 I did that the -- is this the --

6 Q Just tell us what he said to you, if you can
7 remember, not what he felt or what you felt or thought.
8 Just what did Clem say to you?

9 A That the \$10 offer was far too little. In fact
10 I think we all agreed it was --

11 Q Did you agree that the \$15 was too little?

12 A I personally thought it was too little.

13 Q When the estate tax papers were prepared, did you
14 see them, the papers prepared by Mr. Pepper?

15 MR. JENSEN: Objection to form. I don't know
16 what papers we are talking about. I think we should be
17 more specific.

18 Q The affidavit of Mr. Pepper and testate tax
19 return which is in evidence in this trial as an exhibit,
20 subject to verification later by Mr. Pepper.

21 MR. O'KEEFE: Do you have that exhibit?

22 Q I show you Pepper Exhibit C, an affidavit of Mr.
23 Pepper, counsel to the estate of Arlinghaus. It is not
24 Mrs. Arlinghaus signed by him; it's sort of a -- this is
25 subject to his signature; but that is about the estate and

2 the value of the stock of Modern Teleservice, as the attorney
3 for that estate initially submitted it to the Internal
4 Revenue Service on your behalf as executrix of this estate.

5 D: You remember that?

6 A You wish I should read this?

7 Q I am just asking you if you remember a value
8 being placed on your stock, the stock in the estate of
9 which you were executrix. Do you remember the value that
10 was ascribed to that stock when you dealt with Internal
11 Revenue?

12 A I don't recall.

13 Q If you don't recall, you don't recall. Does that
14 help you remember?

15 A Well, I'd have to read it.

16 Q Take a look at it.

17 MR. MATTHEWS: If I might suggest, I think the next
18 to last page of that document, that affidavit will give
19 you the answer.

20 Q That might save you some time, Mrs. Arlinghaus.

21 A I don't know where I am supposed to find, what I
22 am supposed to be looking for.

23 THE COURT: I think what we ought to do, Mr.
24 O'Keefe, is to suspend at this time for luncheon recess.
25 Come back at 2:00 o'clock. Possibly during that time,

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2 she'll have a chance to read that and refresh her recollection.

4 (Luncheon recess.)

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2 AFTERNOON SESSION

3 R O S A L I E M. A R L I N G H A U S, resumed.
4 CROSS-EXAMINATION CONTINUED

5 BY MR. O'KEEFE:

6 Q Have you had a chance, Mrs. Arlinghaus, to take
7 a look at that document that's in front of you on the
8 stand there, which is Defendant Pepper's Exhibit C?

9 A I recall it. Do you wish I should read it again?

10 Q No, we were trying to find out, and I had asked
11 you if you knew the value of the stock, the value placed
12 on the stock of Teleservice in the tax proceedings in the
13 estate in which you are the executrix, and you said you
14 didn't recall that; and I asked you if you looked at those
15 papers which were filed with Internal Revenue on your
16 behalf, whether that would help you. Now I am asking you
17 if you have read them and does it help you to remember.

18 A I might have, Mr. O'Keefe, if I have identified
19 the right area. Shall I read this, please?

20 Q No, just, do you remember the value that was
21 placed on the stock of Modern Teleservice in the estate
22 tax proceeding? Do you know?

23 A I do now, because I have read it.

24 Q Fine. What was it?

25 A I believe if I am reading correctly, the section

2 here, it says: "By reason of an agreement among stock-
3 holders dating back to 1951, the stock cannot be sold with-
4 out offering it to the corporation at a formula price which
5 at the time of the decedent's death was \$9.66 a share."

6 Shall I continue?

7 Q If you wish.

8 A "If the corporation were financially able to do
9 so and had elected to buy the stock testate would have
10 received only 28 percent in cash, and the other 72 percent
11 balance in unsecured promissory notes payable over 48
12 months. Any such sale would be by reason of Section 303 of
13 the Internal Revenue Code, necessitates the sale of all
14 stock of the estate and all attributed shares to avoid
15 taxation as ordinary income."

16 Shall I continue?

17 Q No, that's fine.

18 MR. O'KEEFE: Mr. Jensen, do you have pursuant to
19 our request, the estate tax return of the Arlinghaus'
20 estate?

21 MR. JENSEN: Yes.

22 MR. O'KEEFE: May I have it, please.

23 Q Are you familiar with a value of the Modern
24 Teleservice stock based on an agreement between the share-
25 holders, which contained a formula?

2 A Oh, I don't recall that.

3 Q Did you ever have any discussions with your
4 brother-in-law, Clemens Arlinghaus, about the value of the
5 stock?

6 A Not that I recall.

7 Q When you received Mr. Ritenour's letter of April
8 25, 1967, did you know that Mr. Ritenour was making an
9 offer on behalf of someone other than himself and Mr. Linsky?

10 A I don't recall.

11 Q Did it come later to your attention that Mr.
12 Ritenour when he made the offer to purchase all of the
13 shares of Lear Teleservice at \$15 a share was acting as
14 agent for a group of investors from the Philadelphia area?

15 A That was brought to my attention, yes.

16 Q When did you learn of that?

17 A I definitely recall when it fell through and
18 didn't materialize.

19 Q Is that the first time you learned that it was --

20 A Well, as of now, as my recollection serves me
21 now, yes, sir.

22 Q You did not know for instance at the luncheon at
23 Radio City that that \$15 offer was being made on behalf of
24 a Philadelphia group of investors?

25 A At the luncheon, I honestly can't say that I

2 recall that at that date.

3 Q It was your own opinion, was it not, that the
4 \$15 was too low?

5 A Yes, sir.

6 Q I show you a file which your attorney, Mr. Jensen,
7 has given me entitled "Federal Estate Tax Proceeding," and
8 I direct your attention to United States Form 706, Estate
9 Tax Return for the Estate of Frank Arlinghaus at Windmill
10 Lane, Rumson, New Jersey, and I ask you whether or not you
11 recall signing here way back next to the statement November
12 9, 1965 where it says "Signature of Executor Administrator,
13 et cetera, Windmill Lane, Rumson, New Jersey."

14 The question is: Do you remember the Estate Tax
15 Return, and did you sign it? *

16 A I remember the Estate Tax Return, that it was sent
17 in, and I -- I know I would have to sign it being the
18 executor.

19 Q Do you remember signing it at one point? The
20 original, I assume, would be with the Internal Revenue.

21 A Yes.

22 Q This is a copy, but you do remember signing the
23 original?

24 A I had to sign it.

25 Q Do you remember?

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2 A The day and the hour?

3 Q No.

4 A No.

5 Q Just remember signing it?

6 A Yes.

7 MR. O'KEEFE: I offer, your Honor, the Estate
8 Tax Return of the Estate of Frank Arlinghaus. This is an
9 unsigned, apparently office copy. The witness says she
10 remembers signing it; she doesn't remember when. I show it
11 to Mr. Jensen.

12 MR. JENSEN: I object on the ground it's
13 irrelevant to any issue in the case, your Honor. I have a
14 continuing objection to the use of the estate tax figures
15 on the grounds that they are not probative of the fair
16 market value of the shares.

17 THE COURT: I want to know whether he has an
18 objection or not.

19 MR. JENSEN: I point out to the Court that we
20 have stipulated facts about the Estate Tax Return which pick
21 up all of the valuations and so that even if your Honor
22 overruled my objection on materiality, I don't see any
23 reason for introducing the whole document.

24 THE COURT: Mr. O'Keefe, I was wondering that,
25 too. Why introduce the whole document, for what other

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2 purpose?

3 MR. O'KEEFE: The only purpose I want it in for
4 is value, your Honor.

5 THE COURT: You have that stipulated, don't you?

6 MR. MATTHEWS: I am looking here just to see
7 whether Exhibit 5 is included in it -- Mr. Pepper's affidavit
8 which I think -- what is the number of that exhibit?

9 MR. O'KEEFE: That is your Exhibit C.

10 MR. MATTHEWS: Whether Exhibit C is incorporated
11 here; do you know whether it is?

12 MR. O'KEEFE: I do not know. I don't think so.
13 I am only putting it in for value, your Honor. If it's in
14 the pre-trial, I will withdraw the offer.

15 THE COURT: It's on page 4 of the pre-trial order,
16 what it was fixed for by IRS.

17 MR. JENSEN: Mr. O'Keefe says he withdraws his
18 offer, I believe.

19 THE COURT: All right. The offer is withdrawn,
20 Mr. Matthews, so you no longer need to pour over it.

21 THE COURT: All right. Go ahead with your cross-
22 examination.

23 BY MR. O'KEEFE:

24 Q At the time of the offer by Mr. Ritenour, what
25 you later learned to be the syndicate from Philadelphia,

2 you had had some discussions with Mr. Clemens Arlinghaus
3 and with Mr. Pepper about the need of the Estate of Arlinghaus
4 to raise funds to pay taxes, did you not?

5 A We had been paying taxes on a time basis, and
6 that's what was going on at the time, and foremost in my
7 mind.

8 Q Did you have discussions with your attorney, Mr.
9 Pepper, and your brother-in-law, Mr. Arlinghaus, about the
10 need for the estate to raise money to pay the federal and
11 New Jersey estate taxes?

12 A I recall a discussion of how one would have to
13 come about to find sources to pay the taxes; but I didn't
14 think it was kind of pertinent because they were being paid
15 on an installing basis.

16 Q I show you Defendant's Exhibit D, a letter dated
17 December 21, 1966, addressed to you by Mr. Pepper, and ask
18 you whether or not that refreshes your recollection as to
19 the need of the Estate of Arlinghaus to raise money to pay
20 taxes. I direct you to paragraphs numbered 1, 2, 3, 4,
21 and specifically 5 of that letter, which is in evidence,
22 entitled -- paragraph 5 -- "Where am I to get the money to
23 pay the assessment?"

24 Do you see that, Mrs. Arlinghaus?

25 A I remember the letter. I recall the letter and I

2 remember the questions which were intelligent ones to ask
3 an attorney at the time; and I don't believe at any time
4 there was any pressure at all to go to an outside source
5 of securing revenue to pay the taxes, because there had
6 been a previous arrangement, as I understand it, that they
7 were being paid on an installment basis.

8 Q There was a need to raise money to pay taxes,
9 was there not?

10 A I don't recall that.

11 Q I would like to show you a memorandum dated
12 December 23, 1966, signed by Clem, addressed to you, to
13 Sid and to Milton. Do you remember receiving that
14 memorandum from your brother-in-law?

15 A Yes, I recall this letter.

16 MR. O'KEEFE: Your Honor, I offer as Defendant's
17 Exhibit G.

18 (Defendant Ritenour's Exhibit G marked for
19 identification.)

20 MR. O'KEEFE: I offer G for identification in
21 evidence, your Honor.

22 MR. MATTHEWS: No objection.

23 MR. JENSEN: I have no objection.

24 THE COURT: All right. It may be received.

25 (Defendant Ritenour's Exhibit G for identifica-
tion received in evidence.)

2 THE COURT: Are you going to use this?

3 MR. O'KEEFE: No; you go ahead and look at it,
4 your Honor.

5 (Document handed to the Court.)

6 Q Now you, Mrs. Arlinghaus, sought advice from
7 Clemens Arlinghaus on this problem of raising money to pay
8 estate taxes, did you not?

9 A I think in that particular situation, I probably
10 did ask him, as the lump sum came across to my attention.

11 Q Do you remember that this memorandum states that
12 you are going to have some discussions next Wednesday, it
13 says here, "to pinpoint our discussions next Wednesday."

14 Did you have a meeting on the Wednesday following
15 December 23, 1966, with your brother-in-law and with Mr.
16 Pepper?

17 A I don't recall.

18 Q This memorandum is also addressed to Milton. Do
19 you know who that would be?

20 A That would be a member of the board of directors,
21 who was on the board, I believe.

22 Q What would be his last name?

23 A Lewis.

24 Q Milton Lewis?

25 A Milton Lewis.

2 Q Did you know Mr. Lewis?

3 A Yes.

4 Q Do you know when he became a director of this
5 company?

6 A I am sorry, sir, I don't.

7 Q Was it after or before Mr. Arlinghaus died?

8 A Before.

9 Q He became a director before Mr. Arlinghaus died?

10 A I believe so. I stand corrected on that one.

11 Maybe he was.

12 Q You knew at some time that there was an offer by
13 a syndicate in Philadelphia to buy all of the shares of
14 Modern Teleservice. You knew, you discussed this morning
15 an offer by Fuqua. When did you become aware of the Fuqua
16 offer to buy the shares?

17 A It was after the Philadelphia situation fell
18 through.

19 Q Yes?

20 A So that would be April -- it would be along in
21 March, maybe. I mean certainly it was before April of '68.

22 Q Who brought that to your attention?

23 A I recall that Mr. Pepper did.

24 Q And were there any other offers or negotiations
25 for the purchase of your shares and those of the estate that

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came to your attention after 1967?

A I think there was a man by the name of Falconer,
who was associated with MGM. F-a-1-c-o-n-e-r

Q Falconer of MGM. Were there any other offers that came to your attention?

A Not that came to my attention.

Q How about the Sonderling offer?

A Well, you are talking immediately following now

Q Following. First, the syndicate offer failed; is that so?

A Right.

Q Then the Fugua offer failed?

A Failed

Q Then there were some negotiations as you say with MGM; and I am asking you if you knew of these others.

A Only the closing one, Sonderling Broadcasting Co.

Q How much money did you receive as a result of
the sale of the stock of Modern Teleservice to the Sonder-
ling Broadcasting Co.?

A My personal shares?

O Your shares, as executrix, your personal shares; and your shares being held by you as custodian for your children. I want to know the gross amount of money you

2 realized from this sale to Sonderling.

3 MR. JENSEN: Objection, your Honor, irrelevant
4 and immaterial.

5 MR. O'KEEFE: How can it be irrelevant?

6 THE COURT: Is there any issue as to what this
7 amount is?

8 MR. JENSEN: Well, in the first place, I think
9 it's stipulated that Mrs. Arlinghaus had no personal shares,
10 no shares in her name by the time the Sonderling came.
11 They had bought it all.

12 THE COURT: That is a valid objection.

13 MR. JENSEN: All right. Now, in the second place,
14 I don't think that what Mrs. Arlinghaus realized for her
15 remaining shares is an issue in this lawsuit. She got
16 more than \$20 average for all of them, and if that is what
17 Mr. O'Keefe is driving at, that is conceded.

18 THE COURT: Is there anyone who has a total?

19 MR. O'KEEFE: If you can -- I can get it for you
20 right now. Can you just speak off the record, Mr. Ritenour,
21 and tell me the total that Mrs. Arlinghaus received?

22 MR. RITENOUR: \$1,133,889.12.

23 MR. O'KEEFE: \$1,133,889.12.

24 MR. JENSEN: What is the source of that, Mr.
25 Ritenour? Or Mr. O'Keefe, what is the source of that?

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2 MR. O'KEEFE: My source is Mr. Ritenour. Mr.
3 Ritenour's source is his records and files and the computa-
4 tions he's made.

5 MR. JENSEN: I continue to express my objection
6 as to the materiality, your Honor. I don't see how it's
7 got anything to do with the issue. Besides that, I am not
8 ready to concede the figure. I am not saying it's wrong.
9 I just don't know it's right.

10 THE COURT: All right, I will overrule your
11 objection; and with respect to the figure, there must be
12 some way in which you could ascertain this.

13 MR. JENSEN: Yes, I can ascertain that and I will
14 do it, but I --

15 THE COURT: I will expect you to get the figure,
16 and if it differs from this, to let me know.

17 MR. JENSEN: Yes.

18 BY MR. O'KEEFE:

19 Q This money you received from Sonderling did
20 average to more than \$20 a share for the shares of Tele-
21 service, did it not?

22 MR. JENSEN: That is conceded, your Honor.

23 MR. O'KEEFE: All right.

24 THE COURT: All right.

25 Q Do you have a recollection of being on the board

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of directors of Modern Teleservice at any time. Mrs

Arlinghaus?

A It's reported that I was, but I don't recall it

Q Who reported that to you?

A It's written up on one of the Teleservice board meetings I believe, but --

Q I show you, Mrs. Arlinghaus, a copy of the Minutes of the Special Meeting of Shareholders on March 22, 1968, in which it appears that you appeared in person.

I direct your attention to this paragraph having to do with the nomination of directors. I ask you whether or not that refreshes your recollection that at least at this time, March 22, 1968, you were a director of Modern Teleservice, Inc.

A Mr. O'Keefe, it's down here, but I really don't recall the day or goings-on at all.

Q Do you remember when it was that Modern Teleservice entered into the Sonderling deal?

^ January '68, I believe, I recall, something like
that date.

Q Do you remember when you received the shares of stock of Sonderling that you received as a result of the closing?

In April of '63.

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2 Q April of 1968?

3 A '68.

4 Q That would be one month following that board of
5 directors' meeting, would it not?

6 A Yes.

7 Q Do you recall ever receiving a check from Modern
8 Teleservice as a director's fee in the amount of \$125 for
9 each director's meeting that you attended?10 A I reportedly have received it but I do not
11 recall it.^{so}12 Q Do you know a firm of attorneys in the state of
13 New Jersey: Pitney, Hardin & Kipp?

14 A Yes.

15 Q How do you come to know them?

16 A They are the attorneys that were -- that finally
17 settled the estate --

18 Q When did they do that?

19 A -- of Mr. Arlinghaus.

20 Q When did they do that, ma'am?

21 A They were called and appointed by me in '63.

22 Q Had you dealt with that firm prior to 1968?

23 A No, sir.

24 Q Do you know any member of that firm prior to
25 1963?

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2 A No, sir.

3 Q Do you know an attorney and judge named LeBrecht
4 in the state of New Jersey?

5 A Yes.

6 Q How long have you known him?

7 A Oh, 25 years.

8 Q Is he not the former attorney?

9 A 30 years.

10 Q Is he not the former Attorney General of the
11 state of New Jersey?

12 A Pardon me?

13 Q Was he not the former Attorney General of the
14 state of New Jersey?15 A He might have been. I mean my association was
16 with his wife, who is a very close personal friend of mine.17 Q Did you not from time to time discuss your
18 estate and corporate problems with Judge LeBrecht?

19 A Never.

20 Q Did you not discuss financial and business affairs
21 of the estate with Mr. Vickers, the accountant?22 MR. JENSEN: May we have a time reference? That
23 may be important.

24 THE COURT: Yes.

25 Q 1967 and 1968?

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2 A You te possibly.

3 Q Do you recall how often you would have had that
4 discussion with Mr. Vickers?

5 A No, I don't recall.

6 Q This morning when we were talking, you said you
7 did not remember a lunch with Mr. Vickers and Mr. Pepper
8 on May 3rd, which would be a week to the day prior to the
9 meet. On May 10 at Radio City. During the lunch hour
10 did you have the opportunity to give further thought to
11 that and can you say now whether or not you remember such
12 a luncheon with Mr. Vickers and Mr. Pepper?

13 A On the 3rd of May?

14 Q Third of May, one week --

15 A No, sir, I do not recall that day.

16 Q Do you recall that you did not attend such a
17 lunch or you don't recall attending such?18 A I don't recall either attending with Mr. Vickers
19 and Mr. Pepper on that day.20 Q Nothing happened during the lunch hour that
21 helped you remember that?

22 A No, I can't, no.

23 Q Do you recall the \$10 offer made to you by Mr.
24 Ritenour and Mr. Lipsky which guaranteed you 20 in the
25 event there was a resale to a third party? Do you remember

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2 why -- do you remember whether Mr. Pepper ever explained
3 to you the terms of that offer?

4 A I didn't understand the terms of the offer. My
5 concentration was on that first paragraph of that letter,
6 that I was going to get \$3 in cash and \$7 in promissory notes.

7 Q You understood that part?

8 A That part.

9 Q Was any explanation given to you as to why you
10 were going to be paid in that form?

11 A Not that I recall, no.

12 Q And as you testified, you were paid, were you
13 not?

14 A Yes.

15 Q After the conclusion of the Sonderling sale --
16 purchase, and after you received your shares of Sonderling --
17 I think you said that would be in April of 1968 --

18 A I believe so.

19 Q -- you did not then complain to anyone about your
20 transaction with Mr. Ritenour and Mr. Lipsky, did you?

21 A No.

22 Q When did you make that?

23 A Pardon me?

24 Q When did you first make that complaint? When,
25 after you received the Sonderling stock and had one million

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2 one hundred, whatever it was, thirty-three thousand dollars,
3 after what period of time did you begin to complain about
4 it?

5 A That would have been after the closing of -- some-
6 time after the closing of the sale of Modern Talking
7 Picture Service, which took place in June.

8 Q Of 19 --

9 A 1968. I believe that was the Friday, the 7th of
10 June. Thereafter.

11 Q In the sale of Modern Talking Pictures, Inc.,
12 how much did you receive?

13 MR. JENSEN: Objection, your Honor. Immaterial.

14 THE COURT: What materiality is that?

15 MR. O'KEEFE: Well, your Honor, there is a com-
16 plaint here --

17 THE COURT: You are trying it to a jury and you
18 are trying it to a court.

19 MR. O'KEEFE: I will withdraw the question.

20 MR. JENSEN: I should have made that comment
21 last time around we were talking, your Honor.

22 THE COURT: I gave you an opportunity, Mr. Jensen.

23 MR. JENSEN: Right.

24 Q Then after June of 1968, you made a complaint?
25 Did you make a complaint to Mr. Ritenour and Mr. Lipsky?

2 A No, I don't believe I have seen them since then.
3 Oh, excuse me, except at the depositions.

4 Q Yes, and they were there in my office and here and
5 there. But prior to the institution of this lawsuit, you
6 didn't notify them or call them up and say that you were
7 dissatisfied, did you?

8 MR. JENSEN: We have to get a date established
9 here. I don't know that the witness knows.

10 MR. O'KEEFE: It's from May, 1968 to the institu-
11 tion of this suit.

12 MR. JENSEN: When was this instituted? I think
13 the witness should know what date Mr. O'Keefe has in mind.

14 MR. O'KEEFE: When was it instituted, Mr. Jensen?
15 It's got a '68 index number.

16 MR. JENSEN: I believe it was June.

17 THE COURT: June of 1968, I think.

18 MR. JENSEN: There is not much margin there.

19 MR. O'KEEFE: What is the date of it?

20 MR. JENSEN: No, the complaint is August 28th.

21 MR. UTHLEIN: September 3, '68.

22 MR. JENSEN: That sounds right for the summons,
23 yes.

24 Q Between May of '68 and September of '68, you did
25 not make any complaints to Mr. Ritenour or Mr. Lipsky, did

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2 || you?

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A I don't recall that I did.

4 Q You didn't offer to give them back their money,
5 did you?

6 A I don't believe I had any thoughts along that
7 line. I was busy with my family.

8 MR. O'KEEFE: Your Honor, can I consult my
9 client for five minutes? Then I will finish

10 THE COURT: Surely. Why don't we take a short
11 recess. You can step down for a moment.

12 (Recess -)

Q Mrs. Arlinghaus, this agreement that you entered
into with Mr. Lipsky and Mr. Ritenour was also entered into
by all of the other shareholders of Modern Teleservice,
was it not?

17 A Yes, I believe it was.

18 Q Did you, prior to the institution of this suit,
19 solicit any of the other shareholders to join you in this
20 suit?

21 A I don't recall that I did.

Q Do you know of any other suit pending by any
other shareholder?

24 MR. JENSEN: Objection, your Honor; immaterial
25 and irrelevant.

2 THE COURT: I think it's immaterial.

3 Q When you were having the meeting with Clem Arling-
4 haus and Mr. Pepper in the lower floor of Radio City build-
5 ing where the lunch was held on May 10th, did you then
6 agree to accept the \$20 price?

7 A Yes, we'd hoped that that would be acceptable
8 because 15 was, we thought, much, much too low and 20
9 seemed to be more than a 15; you know.

10 Q Did you agree to the 20?

11 A Yes.

12 Q Did you tell that to Mr. Pepper?

13 A Yes, we conveyed that to Mr. Pepper.

14 Q Did you authorize Mr. Pepper to --

15 A He was to contact Mr. Ritenour and Mr. Lipsky.

16 Q And did you authorize him to do that?

17 A Yes.

18 Q You said it was all right to do that?

19 A He was the attorney.

20 Q I want to show you a paper and ask you if you
21 recognize your signature.

22 A That's my signature, but --

23 Q Do you remember signing it?

24 A I don't recall, but I certainly did. My signa-
25 ture is there.

MR. O'KEEFE: I offer this as defendant's exhibit.

2 (Defendant Ritenour's Exhibit H marked for
3 identification.)

4 MR. O'KEEFE: This is a letter, your Honor, to
5 Mr. Ritenour and Mr. Lipsky and Mrs. Pepper, signed by
6 Mrs. Arlinghaus.

7 MR. JENSEN: Objection as irrelevant and immaterial.

8 MR. MATTHEWS: No objection.

9 THE COURT: May I see it?

10 Received over objection.

11 (Defendant Ritenour's Exhibit H for identification received in evidence.)

12 MR. O'KEEFE: No further questions at this time,
13 your Honor.

14 THE COURT: Very well.

15 Mr. Matthews.

16 CROSS-EXAMINATION

17 BY MR. MATTHEWS:

18 Q Mrs. Arlinghaus, some question was raised as to
19 whether you signed a Fuqua agreement. I show you Exhibit
20 3 with signatures at the foot and ask if one of those
21 signatures is yours.

22 A Yes, that is my signature, but I don't recall
23 the day or the incident.

2 Q That is your original signature?

3 A Yes.

4 Q Who were your advisors in connection with the
5 business transactions having to do with Teleservice stock?

6 A My advisors?

7 Q Yes.

8 A Well, Teleservice had a board of directors.

9 Q I mean advising you personally as to your hold-
10 ings.

11 A I wasn't advised by the operation of the business
12 at all.

13 Q No, I am asking about the marketing of the stock.

14 A I don't think I quite understand what you mean,
15 sir.

16 Q I had understood you to say that you leaned
17 quite heavily on your brother-in-law, Mr. Clem Arlinghaus.

18 A Well, Mr. Clem Arlinghaus and I are the closest
19 of sister-in-law and brother-in-laws, but Mr. Arlinghaus
20 would always report when there had been a board of directors'
21 meeting, the company was run so well, Mr. Ritenour and
22 Mr. Lipsky, and the usual dividends were declared.

23 Q Now you knew, did you not, that Mr. Pepper had
24 asked to be relieved of any responsibility for advising you
25 on business phases of the handling of your stock or the

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2 estate stock?

3 A I don't recall that.

4 Q I call your attention to his letter to you of
5 December 21, 1966, Exhibit D on this hearing under the
6 heading on page 7, Conflict of Interest. "There have been
7 some comments from directors of the respective corporations
8 that as attorney for the corporations and for the estate,
9 I may be in a position where I must elect to serve either
10 the corporations or the estate who questions where the
11 interests of the estate do not coincide with the interests
12 of the corporations."

13 MR. JENSEN: Before you answer that --

14 Q "I agree up to the present time there has been
15 no question where the respective interests have been adverse
16 and no suggestion has been made by anyone," and so on down
17 to the end of that letter. You recall that, do you?

18 MR. JENSEN: Mr. Matthews, was that marked in
19 evidence?

20 MR. MATTHEWS: It's marked in evidence as Exhibit
21 D.

22 MR. JENSEN: Thank you.

23 Q You recall that, do you not?

24 A May I see it, sir?

25 MR. JENSEN: May we have the question reread. I

2 am not sure I understood it.

3 THE COURT: He read a certain portion of it and
4 he is asking her if she recalls it.

5 MR. JENSEN: Recalls the letter?

6 THE COURT: Recalls that portion of it.

7 MR. JENSEN: Yes, all right.

8 A Yes, I recall it.

9 Q You recall it?

10 A Yes.

11 Q And now that a copy of that was sent to Mr.

12 Clem Arlinghaus --

13 A I don't -- I wouldn't know that. It says so
14 there but I haven't had any conversation with him about it.

15 Q -- and you will also note, will you not, that this
16 letter by and large is in response of questions that you
17 had put to Mr. Pepper?

18 A Yes.

19 Q For example: "When do you have to pay the balance
20 of the federal estate tax?" And he answers that in a com-
21 plete paragraph.

22 Two: "What is the additional federal estate tax
23 assessment?" And he answers that in detail. And so on.

24 Another one: "Can I contest the additional
25 assessment?" And he gives you the rules on that.

1 mblm

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2 THE COURT: Mr. Matthews, are you testifying or
3 are you asking questions.

4 Q Those are questions that you asked?

5 THE COURT: You have not asked a question.

6 MR. MATTHEWS: I am asking her if these are not
7 questions that she put to Mr. Pepper.

8 THE COURT: She admitted that.

9 MR. MATTHEWS: Well, that's enough of this one
10 then.

11 Q I show you Xerox copy of a memorandum in the
12 upper left-hand corner marked "Copy of Plaintiff's Exhibit
13 5, and ask you if that is in your handwriting.

14 A Yes, sir, that is my handwriting.

15 Q And it had to do with transactions in the stock
16 of the estate and of your own holdings?

17 A May I speak in my own words? This was -- I
18 believe was done --

19 THE COURT: Is this in evidence? Is it now in
20 evidence?

21 MR. WIHLEIN: Yes.

22 THE COURT: What exhibit is it?

23 MR. MATTHEWS: 5.

24 THE COURT: It is Exhibit 5.

25 MR. JENSEN: May I see what it is?

2 THE COURT: I don't see a tag on it.

3 MR. JENSEN: I think maybe that is Exhibit 5 on
4 some deposition.

5 THE COURT: It's on a deposition. It's not in
6 evidence.

7 MR. O'KEEFE: It's not marked.

8 THE COURT: Are you offering it in evidence, Mr.
9 Matthews? Are you offering it?

10 MR. MATTHEWS: I will offer it if it's not already
11 in evidence.

12 THE COURT: It's not in evidence.

13 MR. UIHLEIN: Yes, it is.

14 MR. MATTHEWS: I will offer it.

15 THE COURT: There is an Exhibit 5 in, but not
16 this.

17 MR. O'KEEFE: That is not in evidence, Judge.

18 THE COURT: Let me see it.

19 MR. JENSEN: That was marked during a deposition
20 and I have the original, your Honor. I will substitute
21 that.

22 THE COURT: You want to substitute the original?
23 All right.

24 MR. JENSEN: I wasn't told it would be brought
25 up. I don't have it handy.

2 THE COURT: Let's put the photostat in. Mark it
3 for identification.

4 Give it to the clerk of the court so he can mark
5 it for identification.

6 (Defendant Pepper's Exhibit I marked for identifi-
7 cation.)

8 Q Do you recall what purpose you had in making that
9 calculation on Exhibit I?

10 A That was just to help me to understand that first
11 paragraph; see; and that I would be -- what the balance,
12 see. The estate, 4,000 of my shares were sold, all right?

13 Q Yes.

14 A Then nine from the estate. Right?

15 Q Yes.

16 A At the \$3 cash and the 7 promissory note, okay?
17 Then that left this much and the estate had 11,000 left,
18 okay? So I was doing my own arithmetic if I was to get
19 20, I'd have \$356,160.

20 Q In other words, you were making --

21 A This was my own arithmetic in my notebook.

22 Q -- you were making a comparison between the \$3 and
23 \$7?

24 A I was trying to understand, what would be left,
25 and so on.

2 Q And then the \$20 price?

3 A Right.

4 MR. MATTHEWS: I will offer it in evidence.

5 MR. JENSEN: I have no objection.

6 MR. O'KEEFE: No objection.

7 THE COURT: All right, received.

8 (Defendant Pepper's Exhibit I for identification
9 received in evidence.)

10 Q There has been some discussion here about Mr.
11 Ritencour and Mr. Lipsky threatening to leave Teleservice
12 and take business with them unless they could buy the stock.
13 Was that threat ever made verbally to you by either or
14 both?

15 A That was conveyed to me by Mr. Pepper on many
16 occasions.

17 Q Mr. Pepper is the only source for that?

18 A Yes.

19 Q And isn't that source his speculation in Exhibit
20 C, where he says: "The corporation has been subjected to
21 intensive competition, in some cases from non-union firms,"
22 and so forth, "in fact, individual firms." I will skip a
23 little. "The personal friendships of the president have
24 been largely responsible for the retention of its business.
25 The thought of what would happen if his services were no

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2 longer available to the corporation has troubled the estate.
3 The sale of all the corporation's stock to another corpora-
4 tion has been suggested to the president. He has stated
5 that he is unwilling to work for anybody else. The corpora-
6 tion has no contract for his services and cannot get one.
7 Without his consent to a sale, it's not likely that the
8 stock of the corporation could be sold. To sum up, while the
9 profits have been interesting, the profit picture could
10 change the other way more quickly than television viewers
11 tire of programs."

12 Isn't that the source of the suggestion that
13 Ritenour and Lipsky would leave, Mr. Pepper's affidavit
14 seeking to reduce the federal estate tax assessment on
15 this stock?

16 A No, sir, Mr. Pepper continually on many occasions
17 conveyed to me, Mr. Ritenour and Mr. Lipsky were very
18 anxious to acquire stock. Okay? And that they would
19 leave if they didn't, if they didn't acquire stock; and
20 then what would I be left with?

21 This is the gesture of Mr. Pepper. And what
22 would I be left with? Wallpaper and film-winding machines.

23 Q That is what Mr. Pepper said to you?

24 A Mr. Pepper has said that on several occasions to
25 me.

2 Q Mr. Ritenour and Mr. Lipsky never did, did they?

3 A Not personally.

4 Q Was there any other source for this information
5 you got other than Mr. Pepper?

6 A No.

7 Q Have you any reason to suggest why Mr. Pepper
8 should say that to you?

9 A Certainly not.

10 Q Isn't the source of it just this affidavit in
11 connection with the valuation of the stock for Federal
12 Estate Tax purposes?

13 A That to me has no relation on the message that
14 was continually conveyed to me by Mr. Pepper. I don't
15 understand that.

16 Q I had understood you to say on one of your
17 depositions that this was the sole source, this affidavit
18 was the sole source of the suggestion that they would --

19 MR. JENSEN: Objection, your Honor.

20 Q -- would leave.

21 THE COURT: I sustain the objection. It's an
22 improper form, Mr. Matthews, and you know better.

23 MR. MATTHEWS: I am sorry, your Honor.

24 Q I show you a letter dated June 30, 1967, an
25 office copy addressed to you, apparently by Mr. Pepper, with

mb1in

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your notation on the bottom, and ask if that is your handwriting.

A That is my handwriting, sir.

MR. MATTHEWS: I offer that letter in evidence.

THE COURT: All right, mark it for identification first.

(Defendant Pepper's Exhibit J marked for identification.)

MR. JENSEN: No objection, your Honor.

MR. O'KEEFE: No objection, if your Honor pleases.

'THE COURT: All right, it may be received.

(Defendant Pepper's Exhibit J for identification
received in evidence.)

Q I show you a letter dated June 30, 1967, carbon copy on the letterhead of DeWitt, Pepper & Howell, addressed to you, two pages, approved by you at the foot of the second page. Is that your signature at the foot of the second page?

A I read this once today. This has been shown to me once before today. This letter has been shown to me once before, I believe, today.

THE COURT: That is not the question.

A Yes, that is my signature.

THE COURT: The question is, is that your

1 mb1m

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2 signature?

3 A Yes, your Honor, yes, yes.

4 MR. MATTHEWS: I offer that in evidence.

5 (Defendant Pepper's Exhibit K marked for
6 evidence.)7 MR. JENSEN: The very same thing as Exhibit 7
8 as far as I can see.

9 THE COURT: It's the same as Exhibit 7?

10 MR. MATTHEWS: Is that the same as your Exhibit 7?

11 MR. JENSEN: Yes, my Exhibit 7, that's right.

12 (Mr. Matthews and Mr. Jensen conferred.)

13 MR. MATTHEWS: I will withdraw that exhibit
14 since it is a carbon copy of Plaintiff's Exhibit 7 in
15 evidence.

16 THE COURT: All right.

17 Q I show you another letter dated June 30, 1967
18 addressed to you as executrix by Mr. Pepper, approved at
19 the foot.20 MR. MATTHEWS: That happens to be already in
21 evidence, the original of that letter, as Plaintiff's
22 Exhibit 6.23 THE COURT: I don't think there is a question
24 pending, is there?

25 MR. MATTHEWS: No, I find that --

2 THE COURT: I think all these letters are in,
3 Mr. Matthews.

4 MR. MATTHEWS: I am sorry if I overlooked them.

5 THE COURT: 6, 7, 8 and 9 are in. These are
6 letters from Mr. Pepper to Mrs. Arlinghaus as executrix and
7 individually and one from Mr. Ritenour and Mr. Lipsky in
8 both capacities.

9 MR. MATTHEWS: And the letters to Mrs. Arling-
10 haus appear to be dated June 30, 1967; and from Mr.
11 Ritenour to her in both capacities, dated July 1; and her
12 reply to Mr. Ritenour, that may also be in evidence, letter
13 dated July 1, in which she agrees to pay the Federal Estate
14 Tax of Frank H. Arlinghaus in full, prior to maturity of
15 the notes.

16 THE COURT: You just put that in evidence. That
17 one you just put in evidence.

18 Mr. O'Keefe just put it in.

19 MR. O'KEEFE: Is that for the estate tax guarantee?

20 THE COURT: Yes.

21 MR. O'KEEFE: That's in and that's II or I, Mr.
22 Matthews.

23 THE COURT: It's II.

24 MR. O'KEEFE: II, signed by Mrs. Arlinghaus.

25 Q I show you an original of an agreement of June

1 mb1m R. Arlinghaus-cross 235

2 7, 1968, which has been referred to but I think it has not
3 heretofore been marked in evidence, and ask if that is
4 your signature.

5 A Yes, that is my signature.

6 MR. MATTHEWS: I offer that in evidence. That's
7 been referred to, your Honor, a number of times, but I think
8 no copy has been marked in evidence as yet.

9 THE COURT: Is that the Sonderling agreement?

10 MR. MATTHEWS: No, that is the agreement that
11 it is suggested would throw this case out of the window
12 by a general release if it were sustained in the other
13 action.

14 THE COURT: All right.

15 (Defendant Pepper's Exhibit L marked for
16 identification.)

17 MR. MATTHEWS: I offer Exhibit L for identifica-
18 tion in evidence.

19 MR. JENSEN: No objection.

20 MR. O'KEEFE: No objection.

21 THE COURT: It may be received.

22 (Defendant Pepper's Exhibit L for identification
23 received in evidence.)

24 MR. MATTHEWS: I offer two letters dated July 1
25 to Mrs. Arlinghaus individually and the second one as

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2 executrix and signed by Mr. Ritenour.

3 THE COURT: Repeat those in evidence as 8 and 9.

4 MR. O'KEEFE: I think so.

5 MR. MATTHEWS: Mr. Jensen produces Plaintiff's
6 Exhibits 8 and 9 which are the originals of the two I just
7 offered.8 THE COURT: I informed you earlier that those
9 were already in evidence. I don't think your associate
10 is listening too well.11 Q Mrs. Arlinghaus, I refer to your deposition,
12 page 66, and ask you if you were asked these questions and
13 gave these answers starting at line 5.

14 MR. JENSEN: What page number is that?

15 MR. MATTHEWS: Page 66, line 5:

16 "Q Did Mr. Ritenour, Mr. Lipsky or Mr. Pepper -- I am
17 sorry, withdraw that question -- did Mr. Lipsky or Mr.
18 Ritenour ever threaten to resign as officers from Tele-
19 service?20 "A I received that information conveyed to me by
21 Sidney Pepper.

22 "Q And exactly what was said? What were the words?

23 "A I don't recall the exact words.

24 "Q Was it just that if the stock were not sold,
25 certain stock were not sold to Lipsky and Ritenour, that

1 mb1m
2 they would resign as officers and take the customers away
3 from Teleservice?

4 "A That would be the approximate conveyance to mean.

5 "Q Were there any other threats or demands or
6 representations besides this that were made by either Mr.
7 Pepper, Mr. Ritenour, or Mr. Lipsky?

8 "A I was reminded that it could happen. They were
9 not under contract.

10 "Q And that was it?

11 "Q Yes, sir.

12 "Q To the best of your knowledge --"

13 MR. JENSEN: Mr. Matthews, where are you reading
14 from?

15 MR. MATTHEWS: The last line on page 66, and I
16 will continue on page 67.

17 MR. JENSEN: Right.

18 MR. MATTHEWS: (Continuing):

19 "Q To the best of your knowledge there were no other
20 threats or representations or demands that were made by
21 Mr. Pepper, Mr. Lipsky, or Mr. Ritenour, other than you
22 have stated?

23 "A There couldn't have been any others. It all
24 pertained to Teleservice. What others did you have in
25 mind?

2 "Q I have none in mind. You are bringing the suit.
3 We are not. I wanted to know what you had in mind.

4 "A That's it; Teleservice.

5 "Q That's it; just the statement that Lipsky and
6 Ritenour would resign if the stock wasn't sold to them.

7 "A Yes, sir."

8 And I note that the word "would" is changed in
9 pencil on this copy of your testimony to "could," so it
10 would read: "just the statement that Lipsky and Ritenour
11 could resign if the stock wasn't sold to them."

12 MR. JENSEN: Mr. Matthews, are you reading from
13 an executed copy?

14 MR. MATTHEWS: No.

15 MR. JENSEN: No, you're not, and I don't know
16 who put that "c" in. It is not in an executed copy. There
17 is a pencil marked "c" or a "w"; whether it's Mrs. Arling-
18 haus' or Mr. Pepper's or somebody else's handwriting, I
19 don't know.

20 MR. O'KEEFE: Do you have an executed copy?

21 MR. JENSEN: No.

22 Q Do you recall that testimony?

23 A Yes, I recall the testimony.

24 Q Is that substantially correct?

25 A May I see this, please?

2 Q Yes.

3 A I withhold the discussion that has come on the
4 "could" and the "would."

5 Q Do you recall what you said: "could" or "would"?

6 A Well, that goes back to one's grammar, I presume.
7 One could always or one would, would. Definitions --

8 Q You don't recall what you said at the time?

9 A That they would resign.

10 Q That is your recollection?

11 A Yes.

12 Q I see.

13 MR. JENSEN: Mr. Matthews, does your copy have
14 a court reporter's certificate on it?15 MR. MATTHEWS: It does, your Honor; page 83,
16 Ruth Kleinman.

17 That is all I have.

18 THE COURT: Mr. Jensen?

19 MR. JENSEN: Yes.

20 REDIRECT-EXAMINATION

21 BY MR. JENSEN:

22 Q Mr. O'Keefe asked you whether you ever asked Mr.
23 Ritenour or Mr. Lipsky whether they had made such threats,
24 and you said you had. At a later date, Mr. O'Keefe said
25 he would come back to it but he didn't. Let me ask you:

1 mb1m R. Arlinghaus-redirect 240

2 When did you ask either one of those gentlemen whether he
3 had made such a threat?

4 MR. O'KEEFE: May we have a time on this, please?

5 MR. JENSEN: Let's have the witness give the
6 time.

7 | A Yes.

8 THE COURT: Tell us when.

9 A It was at Baltusrol in Springfield, a luncheon
10 that Mr. Ritenour attended and Mr. Pepper.

11 Q This was subsequent to this?

12 A Yes.

13 MR. O'KEEFE: Yes, was that luncheon --

14 THE COURT: Subsequent to what time?

15 MR. JENSEN: Fair enough.

16 Q This was subsequent to the May transaction?

A You mean after?

18 Q Yes, after the May transaction?

19 A Yes, after

20 Q And after your sale at \$10 a share?

21 A Yes -

22 Q. You did inquire of Mr. Bittencourt?

23 A YOGA

24 Q Will you tell the Court what happened on that
25 occasion?

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2 MR. O'KEEFE: Your Honor, it's irrelevant. The
3 contract of sale is all over.

4 MR. JENSEN: It's probative.

5 THE COURT: It has an element in it. Your
6 objection is overruled. You may answer.

7 Q You may answer, Mrs. Arlinghaus.

8 A Mr. Ritenour was asked, as I recall, by Mr.
9 Pepper. He said, "Rosalie wants to know if you had
10 claimed that you said -- claimed that you would leave," and
11 Mr. Ritenour just smiled and said nothing and jingled his
12 change in his pocket.

13 Q Once more back to the Rainbow Room, Mrs. Arling-
14 haus, hopefully for the last time today.

15 You testified that Mr. Pepper told you about
16 these threats by Messrs. Ritenour and Lipsky before that
17 conversation. You went in with that threat in your mind,
18 is that right?

19 MR. O'KEEFE: Objection.

20 THE COURT: Overruled.

21 Q When you went into the Rainbow Room, you were
22 aware of that threat that had been made, were you?

23 A Yes.

24 Q When you left the Rainbow Room, was that threat
25 still hanging over your head?

1 mbjm

R. Arlinghaus-redirect

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2 A Yes.

3 MR. O'KEEFE: I object to the word "threat."

4 It's very dramatic.

5 THE COURT: I understand it, and I take it for
6 what it's worth.

7 Q What was your answer, Mrs. Arlinghaus? When you
8 left --

9 A Yes, I was still aware of it when the luncheon
10 was over.

11 Q Did anything happen during that luncheon to remove
12 that threat?

13 A No.

14 Q Did Mr. Ritenour tell you during that luncheon,
15 "Rosalie, don't worry about it. I am not going to quit,"
16 or words to that effect?

17 A No recall of that.

18 Q As a matter of fact, the possibility that Mr.
19 Ritenour would leave and take business with him was one of
20 the considerations at the conference that you, Clem Arling-
21 haus, and Sidney Pepper had subsequent to the luncheon
22 down there in the lobby, was it not?

23 A Yes, sir.

24 MR. JENSEN: That's all I have.

25

RECROSS-EXAMINATION

BY MR. O'KEEFE:

Q When was that luncheon in the Baltusrol
Golf Club?

A I believe that was in either November or December.
It was on a Wednesday.

Q November or December of what year?

A '67ish.

Q Do you recall who was there?

A Just the three: Mr. Ritenour, Mr. Pepper, and
myself.

Q What was the purpose of this luncheon?

A First of all, it was a luncheon to, in my mind,
to have the opportunity to ask Mr. Ritenour if what I had
been -- what had been conveyed to me he had said to Mr.
Pepper.

Q That was the purpose of the luncheon?

A Yes.

Q Did you ask Mr. Ritenour if he was going to resign?

A I believe Mr. Pepper opened the conversation and
said, "Rosalie wants to know."

Q And is it your testimony Mr. Ritenour didn't say
anything?

A Mr. Ritenour didn't say anything.

1 mblm

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2 Q Did you ask him?

3 A I asked him.

4 Q Did he just not say anything?

5 A Just . . t said anything. Just smiled and -- as
6 I said before, he smiled and he jiggled his change in his
7 pocket and it was all over then, anyway.

8 Q What was all over then, anyway?

9 A Well, he didn't say anything more. I mean --

10 Q Wasn't it the purpose of the luncheon at the
11 Baltusrol Golf Club to enlist the assistance of Mr. Ritenour
12 in selling the stock of Modern Talking Pictures, Inc.?

13 A Well, I don't really recall that today.

14 Q Was that discussed at that lunch?

15 A I am sorry, I don't recall that, sir.

16 Q What do you recall about that lunch?

17 A Just what I have conveyed to you.

18 Q How long was the lunch?

19 A I wouldn't -- how long does one have lunch? I
20 mean --

21 Q I am asking you.

22 A I don't -- I would say an hour or so, hour-and-a-
23 half, two hours.24 Q And all you remember is Mr. Ritenour smiling and
25 jingling the coins?

mb1m R. Arlinghaus-recross
"Pepper"

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A That's it; yes, sir.

Q You don't remember that the subject of Modern Talking Picture was discussed?

A No, sir, I do not recall that today.

MR. O'KEEFE: No further questions.

THE COURT: Mr. Matthews?

MR. MATTHEWS: No more questions.

THE COURT: Mr. Jensen?

MR. JENSEN: Nothing more, your Honor.

THE COURT: You may step down.

(Witness excused.)

MR. JENSEN: Over the lunch hour, I finished marking Mr. Pepper's deposition with the additional passages and I would like to read them now.

THE COURT: I think we will take a recess before you start to read. All right? Your counter-reader can get a drink and --

MR. JENSEN: Page 176, Mr. Pepper's deposition.

(Messrs. Jensen and Blades reading.)

MR. JEONSEN: Line 20 starts with an "a".

"A I reported to Mrs. Arlinghaus that Mr. Ritenour and Lipsky didn't have the wherewithal to take down more than 30 percent; that Mr. Ritenour was concerned about the payment for services in connection with the sale of assets.

1 mblm

"Pepper"

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2 by Modern Teleservice, Inc.; that he had ascertained from
3 someone that services of an attorney of fair standing at
4 least in the sale of assets of a business such as Teleservice
5 would be in excess of a hundred thousand dollars; that he
6 felt that there was no money in Modern Teleservice, Inc. to
7 pay such a fee unless it was paid out of income; and that
8 the effect of paying it out of income would be to reduce
9 the sales price of the assets substantially and out of pro-
10 portion to the amount of services that would be charged.
11 And Mr. Ritenour asked if I would permit the services in
12 connection with the sale of the assets of Modern Teleservice
13 without compensation if my wife had an investment position
14 in the company."

15 178, line 22:

16 MR. MATTHEWS: May I double-check that, please,
17 sir? 176 you started at line 20?

18 MR. JENSEN: Yes.

19 MR. MATTHEWS: And finished up that page?

20 MR. JENSEN: No, I went into page 177, line 12.

21

22 MR. MATTHEWS: Through line 12?

23 MR. JENSEN: Right. Now, page 178, line 22:

24 "Q Who told Mr. Ritenour that if Teleservice were
25 to pay \$100,000 in attorney's fees out of income, that the

1 mb1m "Pepper" 247

2 price would necessarily be lowered disproportionately?

3 "A I can't answer that, but I assume that Mr. Ritenour
4 was sophisticated. His attorney, Mr. Scharf, had written
5 a book on the subject of corporate acquisitions and I know
6 Mr. Ritenour had a copy of it in his possession, and
7 presumably, he had read it or even studied it.

8 "Q Did you check on the accuracy of his statement
9 in that respect yourself by consulting someone or some
10 reference work?

11 "A I don't think I had to check the accuracy. I
12 thought it was correct, based on my personal knowledge of
13 financing."

14 Page 179 --

15 MR. MATTHEWS: May I double-check that? What
16 line did you start on on page 178?

17 THE COURT: Mr. Uihlein, I wish you would go up
18 with Mr. Matthews and assist him, please, because this
19 gets to be a little bit ridiculous.

20 MR. O'KEEFE: He started on line 22, page 178
21 and he ended at line 11, page 179.

22 MR. JENSEN: Going to page 181 now, line 3:

23 "Q Did you suggest to Mrs. Arlinghaus that she sell
24 30 percent to the Ritenour group instead of 40
25 percent of her stock at any time?"

1 mb1m "Pepper" 248

2 "A Not that I recall.

3 "Q Did you advise Mrs. Arlinghaus as to the legality
4 of the proposed sale?

5 "A Specifically?

6 "Q Specifically.

7 "A No.

8 "Q Did you form an opinion as to the propriety
9 under the law of the purchase by Messrs. Ritenour and Lipsky
10 at the price of \$10 of 40 percent of the estate's shares
11 and all of Mrs. Arlinghaus' old shares? "

12 Mr. Rosen objected to the form. He didn't like
13 the word "propriety."

14 MR. JENSEN: I said, "Change it to legality."

"A I thought it was legal.

16 "Q Did you do any research on that question, Mr.
17 Pepper?

"A Not that I recall."

19 Page 185, line 20:

20 "Q Were you to charge anything for your services in
21 the sale of Teleservice assets?

22 "A No.

23 "Q How were you going to be compensated for it?

"A I was not to be compensated for it."

25 Page 191, line 8:

1 mblm

2 "Q Were you compensated for those services, Mr.
3 Pepper?

4 "A No.

5 "Q When did you undertake to perform those services?

6 "A In or about June of 1967.

7 "Q Was that on the occasion on which Mr. Ritenour
8 told you that he had been told that it would cost a hundred
9 thousand dollars to perform those services?

10 "A My testimony was that Mr. Ritenour said it would
11 be in excess of \$100,000.

12 "Q My question stands corrected accordingly.

13 "A That was the time I had the discussion with Mr.
14 Ritenour, yes.

15 "Q Did you tell Mr. Ritenour at that time that you
16 wouldn't charge anything for those services?

17 "A If my wife were an investor in the company.

18 "Q That was the condition?

19 "A Right.

20 "Q Did you compute the time that you put in per-
21 forming those services, Mr. Pepper?

22 "A No.

23 "Q Is it your custom to keep track of your pro-
24 fessional time?

25 "A No.

1 mblm

"Pepper"

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2 "A Well, isn't it in the letter? Each letter has a
3 figure.

4 "Q Please read my question back.

5 "A It's not in the letter"

6 MR. JENSEN: Well, I said that it's not in the
7 letter.

8 "Q Without re-computing it, do you recall approxi-
9 mately what it was?

10 "A In the neighborhood of \$27 plus."

11 Page 210, line 18:

12 "Q When did you first tell Mrs. Arlinghaus that
13 Miriam Pepper would be a purchaser of some of the shares
14 to be sold?

15 "A Before June 30th.

16 "Q How much before?

17 "A I don't know. It was probably between June 9th
18 and June 30th.

19 "Q Do you recall whether it was in a telephone con-
20 versation or at your office?

21 "A I have no recollection.

22 "Q Or some other place. You do recall the conversa-
23 tion, don't you?

24 "A Yes.

25 "Q What did you tell her about that subject matter?

2 "A The New York exchange was a combination of
3 educational film and television commercials.

4 In 1951, Mr. Ritenour was brought up from
5 Atlanta to head up a television division. The New York
6 office was split into two offices, one for educational
7 film and one for television activities. He gave me a choice
8 of staying with the Educational Film Division or going into
9 the Television Film Division and I went into the Television
10 Film Division.

11 "Q Were you then the Manager of the Television Film
12 Division of Modern Talking Picture Service?

13 "A Yes.

14 "Q For how long did you remain the Manager of the
15 Television Film Division?

16 "A Through November of 1952, I was still Manager of
17 the New York office, when Mr. Ritenour sent me out to
18 California to explore the possibilities of opening up a
19 Los Angeles branch.

20 I spent three weeks in California, came back to
21 New York, and on January 1st, 1953, I moved to California to
22 open up a Television Division Exchange as Manager.

23 "Q For how long did you retain that title?

24 "A I was elected a Vice President January 1st, 1958.
25 I was a Vice President and Manager. I still retain the

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2 formulated an Executive Committee and I was Chairman of the
3 Executive Committee for one year, and I could not give you
4 the exact dates.

5 "Q Now do we have all your positions with either
6 company?

7 "A I'm sure you do."

8 MR. JENSEN: Page 15, line 5:

9 "Q Can you tell us what portion of the total
10 business of the company, by whatever name it was known at
11 the time, was accounted for by the California office in
12 terms of gross sales after the first year of operation of
13 the California office, either accurately if you can, or by
14 approximation.

15 "A I suppose it varied from year to year, depending
16 on the accounts.

17 "We might one year be twenty-five percent of the
18 gross and we might another year be thirty or thirty-five to
19 forty percent of the gross. I couldn't give you an
20 accurate percentage."

21 MR. JENSEN: Page 17, line 6. It's an answer:

22 "A The largest account handled in the California
23 office was the Leo Burnett Company out of Chicago."

24 MR. JENSEN: Page 18, line 2:

25 "A I could not tell you in gross dollars or how

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2 large the accounts were, but I originated in California the
3 J. Walter Thompson office.

4 "Q That's a construction firm?

5 "A It's an advertising agency.

6 Dan B. Miner Company, Guild, Bascom & Bonfiglia,
7 MCA Corporation, McCann-Erickson. There were probably
8 others.

9 "Q These were the major accounts solicited by you?

10 "A They were the major accounts, yes.

11 "Q Let's turn now to the other category that you
12 mentioned.

13 "Would you name for us, as far as you can, those
14 accounts which were brought in by others, but which were
15 taken over by you and which, as a result of your talking
16 them over, became more profitable to the company.

17 "A Leo Burnett Company.

18 "Q Is that Mr. MacCallum's contribution originally?

19 "A I believe it was -- no. Leo Burnett was not
20 Mr. MacCullum. That was Mr. Ritenour's. I was thinking of
21 McCann-Erickson, which was Mr. MacCullum's originally.

22 "Maxon Company, which was Mr. Ritenour.

23 "I can't remember others.

24 "Q Did the accounts which you have listed for us in
25 the two categories account for virtually all of the

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2 business in the Los Angeles office which originated with
3 the Los Angeles personnel?

4 "A Yes."

5 MR. JENSEN: Page 30, line 19:

6 "Q When did you first hear about the proposal which
7 Harris Shapiro made?

8 "A In April of 1967.

9 "Q What happened in April of 1967?

10 "A Mr. Shapiro introduced Zinman and Stat to us.

11 "Q You had met Mr. Shapiro before, had you not?

12 "A I suppose he had been in the office before that
13 time, yes.

14 "Q Did you talk to him before about the possibility
15 of someone acquiring some stock in Teleservice?

16 "A No, not for some of the stock of Teleservice; for
17 the sale of Teleservice.

18 "Q Can you give us the substance of your conver-
19 sations?

20 "A No. It was just generalities. By that I mean,
21 there was nothing definite. That we were an interested
22 party, the company, Modern Teleservice, to a marriage with
23 a larger company who would help us in our growth activities.

24 "Q Is it fair to say, then, that the type of
25 transaction that you and Shapiro first discussed was the

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2 "Q Did you ever discuss with Mrs. Arlinghaus any
3 suggestion that you had made such a threat?

4 "A Did I ever?

5 "Q Discuss or talk with Mrs. Arlinghaus about any
6 suggestion that you had made such a threat?

7 "A No."

8 MR. JENSEN: Page 58, line 21. It's an answer:

9 "A We had meetings, Mr. Ritenour and I, with Sidney
10 Pepper, who was counsel for Modern Teleservice, and the
11 discussion centered around Mr. Ritenour and I each getting
12 fifteen percent shares in the company from the existing
13 stockholders.

14 "Sidney thought it could be done. He didn't see
15 why it could not be done, and the plan was formulated where
16 Mr. Ritenour and I each would get fifteen percent share of
17 the company.

18 "Q At whose bhest were the discussions had with
19 Sidney Pepper?

20 "A I suppose both Mr. Ritenour and I called Sidney.
21 Sidney was in and out of the office quite often.

22 "Q Is it fair to say that you and Mr. Ritenour took
23 the initiative toward these discussions with Sidney Pepper?

24 "A I think we did, yes."

25 MR. JENSEN: Page 63, line 14:

2 "Q Did anyone, other than you, Mr. Ritenour and
3 Sidney Pepper, participate in the discussions which led up
4 to the June 30th proposal?

5 "A If I remember correctly, Mr. Ritenour and I met
6 with Charlie Newton, who was Vice President of the Chase
7 Manhattan Bank and took care of the accounts of Modern
8 Teleservice, Modern Talking Picture Service, knew Mr.
9 Arlinghaus, Frank Arlinghaus, on a friendly basis, knew
10 all the executives and officers of both companies, and I
11 think we went to Mr. -- yes, we did go to Mr. Newton and
12 we explained what we would like to do in acquiring jointly
13 thirty percent share of the stock, and Charlie thought it
14 was a marvelous idea.

15 "Q Did you seek his advice?

16 "A I am sure we wanted to know if Charlie thought it
17 were a good idea and he said yes. We also asked Charlie
18 that if we needed money to pay off the shares of stock,
19 would we get a loan against it, and he said he thought
20 something could be arranged, yes.

21 "Charlie Newton was all for the idea. He thought
22 it was a very good idea.

23 "Q Do you know whether he knew the company?

24 "A Did he know Modern Teleservice?

25 "Q Yes.

"A Yes, Charlie Newton knew Modern Teleservice.

2 "Q Was he in charge of the Teleservice account?

3 "A Charlie was Manager of the branch bank at
4 Rockefeller Center --

5 "Q Did Teleservice have an account there?

6 "A -- where Teleservice had an account, yes."

7 MR. JENSEN: Page 67, line 18:

8 "Q When did it first come to your attention that
9 Mr. Pepper's wife or Mr. Pepper might buy stock as part of
10 the same transaction?

11 "A In our conversations that led up to the
12 formulation of this letter of agreement to the shareholders,
13 Sidney Pepper asked both Mr. Ritenour and myself if we had
14 any objection of his trying to acquire percentage shares
15 from the shareholders.

16 "The first reaction, I remember, was Mr. Ritenour
17 saying to Mr. Pepper, 'Sidney, what the hell for? It's
18 John and I who built up this company.'

19 "There was much conversation. Sidney said as long
20 as people were willing to sell some of their shares, he
21 would like to participate, and either Mr. Ritenour or
22 myself said to him -- that's Mr. Pepper -- 'Sidney, what
23 you do is your business. We're just telling you what we
24 would like.'

25 "Q Now, you testified that first Pepper asked and

1 pg Jim

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2 then Mr. Ritenour inquired into his motives and then you
3 said there was much conversation.

4 "Will you please tell us what you remember of
5 the conversation.

6 "A Not important things. The conversation was
7 complete generalities. Mr. Pepper would say, 'Well, as
8 long as the shareholders are willing to sell, does it
9 matter who buys or if I buy?' And Mr. Ritenour answered
10 words to the effect, 'Sidney, why do you want in?' And
11 it was this type of conversation that went on.

12 "I suppose there was a reluctance on both
13 Mr. Ritenour and my part of Sidney getting in, but as long
14 as he wanted to get in, we had no way of stopping him, as
15 long as the shareholders were willing to sell; they were
16 grown-up people; they could sell to whomever they liked,
17 I suppose.

18 "Q What was the reason for your reluctance to admit
19 Pepper in?

20 "A I suppose because this, the company, Modern
21 Teleservice, was our baby. We had given birth to it; we
22 had nurtured it; we raised it and made a flourishing thing
23 and we felt that, I suppose, why should he be a part of it,
24 but then again, if they want to sell to him, they have a
25 right to sell to him. It's a nebulous thing.

2 "Q Did Mr. Pepper offer either you or Mr. Ritenour
3 any inducement for allowing him to tie his own transaction
4 up with yours?

5 "A I suppose if Mr. Pepper had offered us any inducement,
6 he would have been thrown out a four-story window.

7 "Q I take it he did not offer you any inducement.

8 "A Absolutely not.

9 "You've got to remember -- "

10 MR. JENSEN: We don't need the rest of it.

11 MR. O'KEEFE: Oh, no. Read it. I want the full
12 answer. You have to have the full answer.

13 THE COURT: Read the full answer.

14 MR. JENSEN: The rest of it has nothing to do --

15 THE COURT: Let's read the full answer.

16 MR. O'KEEFE: I don't want a characterization
17 of the testimony.

18 THE COURT: Read the rest.

19 "A Absolutely not.

20 "You've got to remember -- let me give you a
21 paragraph of the way Mr. Ritenour operated in our company.
22 When I say Mr. Ritenour, I mean me too.

23 "Many of our competitors have their accounts
24 because there was payola under the table, weekends in the
25 Catskills, trips to Miami.

1 pgm

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2 Q Thank you.

3 Did you get one share certificate from Sonder-
4 ling in April of 1968?

5 A No. They were broken into different certificates.

6 Q How many different certificates, do you recall?

7 A I could not tell at this time.

8 Q Was there any way you could tell which certificate
9 was given for which Teleservice stock?

10 A There was no --

11 Q No tie-in?

12 A No tie-in whatsoever.

13 Q Using the formula, the price formula, of the
14 Fuqua contract, did you at or about the time of the
15 contract or later on for that matter, compute the value
16 of the Fuqua shares which were to be given for Teleservice?17 A The Fuqua deal was for \$3,000,000 for the assets
18 of Modern Teleservice, which was on a share-for-share
19 basis.

20 Q 3,000,000 is a round figure, is it not?

21 A Yes.

22 Q 3.2 -- is that a closer approximation?

23 A I do not know.

24 Q I show you this press release from Fuqua which
25 was marked during the deposition. I ask you to read it

1 pgm
2 Q It was more than 3.2?

3 A I don't know.

4 Q The restrictions on the sale of Teleservice
5 stock were lifted in October of 1966, right, sir?

6 A Yes, sir.

7 Q At that time you were busy finding a seller for
8 the company, is that right?

9 A I would not say at that time I was busy.

10 Q On October 19, 1966 you saw Mr. Mintz, right, sir?

11 A Yes.

12 Q What was the date of the expiration of the stock-
13 holders agreement which contained these --

14 A October 15, 1966.

15 Q On October 10th you had seen Mr. Mozelle?

16 A Yes.

17 Q And the subject matter for discussion on both
18 those occasions was the possible sale of Teleservice, is
19 that right?

20 A Yes.

21 Q Mr. Mintz led to Mr. Shapiro and it was through
22 Mr. Shapiro -- first of all Mr. Shapiro was busy through
23 the most of 1967 trying to make it possible for you to
24 buy or sell Teleservice, isn't that right?

25 A Yes.

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2 Q It was through Mr. Shapiro, for one thing, that
3 the syndicate was created?

4 A Yes.

5 Q Did you ever introduce Mr. Shapiro to Mrs.
6 Arlinghaus?

7 A No.

8 Q Or to Mr. Clem Arlinghaus?

9 A No.

10 Q The agreement of the syndicate was to put up the
11 money to buy all of the Teleservice stock for \$15 and then
12 they went up to \$20 and at that point the agreement was for
13 the syndicate to put up all of the money to buy the 58,100
14 shares outstanding of Teleservice stock for \$20 a share?

15 A Yes.

16 Q And then under your agreement with them they were
17 to give 12 1/2 percent of that stock to you, gift it
18 to you, I think they called it, and 12 1/2 percent to Mr.
19 Lipsky?

20 A Yes.

21 Q So that what they were paying was really \$20 a
22 share for the total outstanding issue and in return for
23 that they were going to get 75 percent of Teleservice, for-
24 getting about your shares, ducking your 12 1/2 percent and
25 Mr. Lipsky's 12 1/2 percent, is that a fair statement?

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2 A No.

3 Q What's wrong with it?

4 A I would say that they were buying 100 percent
5 of Modern Teleservice, Inc. We all became owners in the new
6 corporation.

7 Q You would have gotten 12 1/2 percent of that new
8 stock for nothing, "as a gift" -- to use the term Mr. Shapiro
9 would?

10 A Yes.

11 Q And Mr. Lipsky the same?

12 A Yes.

13 Q Did you ever tell Mrs. Arlinghaus of this arrange-
14 ment?

15 A No.

16 Q Or Mr. Clem Arlinghaus?

17 A No.

18 Q Shapiro eventually leads to Sonderling. He
19 was the one when the other deals fell through for one
20 reason or another, who found Sonderling?

21 A That's right.

22 Q For that he got 10,000 Sonderling shares?

23 A As agreed by the shareholders, at which time I
24 was in Florida.

25 Q What you are saying is that you had nothing to

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2 do with that?

3 A I was not present when the papers were signed.

4 Q When was the first time you heard that Fuqua
5 was or might be interested in buying Teleservice?

6 A On September 7, 1967.

7 Q Who told you on September 7, 1967 that Fuqua
8 might be interested in buying?9 A I attended a luncheon at which time Mr. Pepper,
10 a Mr. Hertz, and Mr. Tom Hennessy were present, and at
11 that time I was introduced to Mr. Hennessy of Fuqua Indus-
12 tries.

13 Q He was the President of Fuqua Industries?

14 A No. He was not.

15 Q Was he a Vice President?

16 A I believe so.

17 W Who invited you to that luncheon?

18 A Mr. Pepper.

19 Q Do you recall how many days before the luncheon --

20 A No. I do not.

21 Q When he told you that this meeting was to take
22 place, was that the first time you heard that Fuqua might
23 be interested?

24 A Yes.

25 Q Would this have been as much as a week or less

1 pg1m Ritenour-direct
2 before?

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3 A It could have been.

4 Q Your notes prepared for your deposition show
5 an entry: "August 14, 1967, letter from T. Hennessy, Fuqua
6 to D. L. Hertz/S. Pepper acquaintance."

7 What's the source of that entry?

8 A Apparently I was told about the letter from
9 Hennessy to Hertz by Pepper.

10 Q When were you told?

11 A I don't know.

12 Q Do you have anything that might refresh your
13 memory?

14 A I don't know. The two dates.

15 Q When you prepared these notes, what made you put
16 down what I just quoted?

17 MR. O'KEEFE: This is all irrelevant to the
18 issues. He has gone far afield. I object.

19 MR. JENSEN: What I'm getting at, Mr. Ritenour's
20 sale or purchase of \$10 shares closed a couple of weeks
21 before this and I wanted to see how much closer this trans-
22 action may have been to the time of the closing of the
23 purchase. It may have come before.

24 MR. O'KEEFE: There is no question about any of
25 that.

THE COURT: I think it's reasonable to get it on
the record. SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

2 Q Mr. Ritenour, what made you make the entry? What
3 source did you have for the entry that I quoted?

4 A Probably an entry on my diary.

5 Q Do you have a copy of that letter?

6 A No, I don't. It was not my letter.

7 Q When did you receive the stock? When was actual
8 delivery to be made to you by Mr. Pepper, the stock which
9 you bought at \$10 a share from the Arlinghaus estate and
10 Mrs. Arlinghaus. At the time the promissory notes were
11 paid in full?

12 Q Yes, sir.

13 When were you told by Mr. Pepper that the sale
14 had become final?

15 A Upon receipt of letters from the shareholders
16 signifying their acceptance of the offer.

17 Q The last one to signify his acceptance was Mr.
18 MacCallum, right, sir?

19 A I do not know.

20 Q Would you check your notes and see if they might
21 refresh your recollection?

22 A My notes show that on July 26, 1967, a letter
23 from MacCallum to Ritenour agreeing to sell.

24 Q So that was the approximate time when the \$10
25 purchase became final, Mr. Ritenour, is that a correct

1 statement?

2 A I don't know what you mean by "final."

3 Q All right. You made your offer to Mrs. Arlinghaus
4 to buy at 15 increased to \$20 in April of 1967?

5 A Yes.

6 Q Did you believe that Rosalie Arlinghaus knew the
7 value of Teleservice at that time?

8 A I did not know.

9 Q If she knew the value, she didn't learn it from
10 you did she, sir? You never talked to her about the value
11 of Teleservice, did you?

12 A No, I did not.

13 Q What was the trend of earnings in the first
14 quarter of 1967?

15 A I would have to look at my records.

16 Q Mr. Ritenour, on March 14, 1967 there was a
17 stockholders' meeting. Do you recall that?

18 A March 14, '67?

19 Q Yes, sir.

20 A Yes.

21 Q At which a motion was unanimously approved
22 complimenting Messrs. Ritenour and Lipsky on exceptional
23 growth -- an exceptional growth record of management. Do
24 you recall that?

1 mb1m

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2 A Yes, that was referring to the year 1966, as it
3 was the first directors' meeting after the close of the
4 fiscal year.

5 Q It was a stockholders' meeting, wasn't it?

6 A Yes.

7 Q The first meeting with Shapiro was April 5, 1967,
8 right, sir?

9 A Yes.

10 Q You were authorized by the syndicate to buy a
11 hundred percent of the shares on April 24th?

12 A Yes.

13 Q The next day you sat down with Messrs. Pepper
14 and Lipsky and you framed the letter which went out that
15 day?

16 A Yes.

17 Q Your notes show that the tender offer was
18 increased by the syndicate on May 11, and that Mrs. Arling-
19 haus agreed to accept the \$20 offer?

20 A Yes.

21 Q So far as your notes go, and your then-recollection,
22 it was the syndicate that came up with the \$20 offer
23 and it was Mrs. Arlinghaus who accepted it?

24 A And Mr. Eberle.

25 Q Yes, sir, who was another stockholder?

2 A Yes, he was.

3 Q And after the June 9 failure of the syndicate
4 or precisely three days later, you sat down with Mr. Steven-
5 son who was a friend of yours, to interest him in buying
6 the company?

7 A Yes.

8 Q Was Mr. Pepper present at that luncheon?

9 A Yes.

10 Q Did you ever tell Mrs. Arlinghaus about Mr.
11 Stevenson's interest?

12 A No.

13 Q At any rate nothing materialized from that?

14 A No.

15 Q Two days later there was a board resolution
16 authorizing you and Mr. Lipsky to engage a financial con-
17 sultant to help sell the company?

18 A Yes.

19 Q And the letters by which Mrs. Arlinghaus agreed
20 to sell all of her own and 40 percent of her estate's
21 shares was dated June 30th, and she agreed to sell at \$10?

22 A Yes.

23 Q In May, you had agreed to pay \$20; now you paid
24 \$10. Let me ask you why, if it was worth \$20, did you
25 pay \$10?

1 mb1m

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2 at least \$27, you would have realized a profit of 17?

3 A Yes.

4 Q That was your reasoning at the time?

5 A Yes.

6 Q When did you tell Mr. Karp that he could have
7 the company for 3,000,000? Can you place it in time?

8 (Pause.)

9 A Will you repeat your question, please?

10 Q Yes. When was it that you told Mr. Karp that
11 the company could be had or at least that you suggested
12 the purchase price to Mr. Karp of \$3,000,000?

13 A In discussions with Mr. Karp of Screen Gems?

14 Q Yes, sir.

15 A On the possible acquisition of Modern Teleservice
16 by Screen Gems in verbal negotiations?

17 Q Yes, sir.

18 A It is possible that the \$3,000,000 figure was
19 used by me in placing the value of the company.20 Q When you used that figure, you did that because
21 you thought that was the value of Teleservice; is that
22 right, sir?

23 A I must have.

24 Q Did you ever tell Mrs. Arlinghaus that you
25 thought Teleservice was worth \$3,000,000?

2 A Yes.

3 Q For your continued employment after the syndicate
4 acquired the company?

5 A Yes.

6 Q Modern Teleservice. Now, in the discussions
7 with the board of directors upon which Mr. Clemens Arling-
8 haus, sir, that board authorized you at some point
9 to seek out buyers for Modern Teleservice, did they not?

10 A Yes.

11 Q And in those meetings when the board was authoriz-
12 ing you and subsequent thereto, was there not a discussion
13 of the value of Modern Teleservice, as it would be presented
14 to a buyer, of all of the stock or assets?

15 A Yes.

16 Q Didn't Mr. Clemens Arlinghaus participate in
17 those discussions?

18 A Yes.

19 Q So there were discussions of the value of the
20 company in his presence, were there not?

21 A Yes.

22 Q What was the price at which you originally
23 acquired the stock in Modern Teleservice from Mr. Frank
24 Arlinghaus? How much did you pay for it?

25 A \$7 per share.

2 Q How much did Mr. Lipsky pay for it?

3 A \$7 per share.

4 Q How much did Mrs. Cox pay for it?

5 A \$7 per share.

6 MR. O'KEEFE: No further questions.

7 THE COURT: Mr. Matthews?

8 MR. MATTHEWS: No questions, your Honor.

9 THE COURT: All right, go ahead Mr. Jensen.

10 REDIRECT EXAMINATION

11 BY MR. JENSEN:

12 Q When did you buy Teleservice shares for \$7 a
13 share?

14 A In the years 1961, '62 and '63.

15 MR. JENSEN: That's all I have, your Honor.

16 MR. O'KEEFE: No further questions, your Honor.

17 THE COURT: All right, you may step down.

18 We're going to take a short recess.

19 MR. JENSEN: I am going to ask Mr. Lipsky to
20 take the stand.

21 THE COURT: All right.

22 JOHN JOSEPH LIPSKY, called as a witness
23 by the plaintiff, being first duly sworn, testified
24 as follows:

25

1 mblm Pepper-direct 301

2 may have come out of the joint checking account but they
3 originated with her.

4 Q And those funds were at no point in past history
5 contributed by you, sir, to her?

6 A Well, I don't know. I have been married a long
7 time.

8 Q Yes.

9 A I have been making gifts to her over the years.

10 Q Yes. But in no other way would funds have come
11 to Mrs. Pepper from you, which were used to pay the \$10-a-
12 share purchase price?

13 A All I can say is that all the -- the \$10 that she
14 paid all came from her own sources.

15 Q Let me ask you for precisely: When was the
16 transfer of the stock made from the name of the Arlinghaus'
17 estate and Mrs. Arlinghaus to the name of Miriam Pepper?

18 A I don't know, but the transaction didn't become
19 final until June 17th, when Mrs. Arlinghaus advised me
20 that she had consulted the people that she wanted to consult,
21 and I could now release the papers -- I could then release
22 the papers.

23 Q Would you tell me, sir, have you any way of
24 establishing right now as you sit here on what day the
25 stock was actually transferred?

1 mb1m

Pepper-direct

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2 A The certificates may have been dated July 1st to
3 conform with the contracts, but everything was frozen
4 until July 17th.

5 Q July 17th?

6 A Yes. Did I say June 17th? That was a mistake.

7 THE COURT: Yes.

8 Q Well, they were frozen a little bit longer than
9 that, weren't they, Mr. Pepper? Isn't it a fact that Mrs.
10 Arlinghaus' sale was not in any event to become effective
11 until the last, among the other stockholders should have
12 agreed to sell on the same terms?

13 A Well, I have a written release from her dated
14 July 17th in which she permitted me to release the contracts.

15 Q That was the one that was introduced into evidence
16 yesterday, right, sir?

17 A Correct.

18 Q Isn't it a fact that Mr. MacCallum didn't agree
19 to the terms, didn't agree to sell in those terms until
20 late July?

21 A I don't know what he agreed to with her. She
22 dealt directly with him.

23 Q In June and July, 1967, you were the attorney
24 for Mrs. Arlinghaus and for the Arlinghaus' estate, right,
25 sir?

1 mb1m

Ritenour**direct

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2 AFTERNOON SESSION

3 2:00 p.m.

4 MR. O'KEEFE: Defendant's case, your Honor.

5 Defendant Ritenour, please.

6 The witness has been previously sworn, your Honor.

7 THE CLERK: You are reminded you are still under
8 oath, sir.

9 THE WITNESS: Do.

10 JOSEPH RICHMOND RITENOUR, a defendant
11 called as a witness in his own behalf, having been
12 previously sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. O'KEEFE:

15 Q When did you begin employment with Modern
16 Teleservice, Mr. Ritenour?

17 A September 1st, 1946.

18 Q Where was that?

19 A In New York.

20 Q Who employed you?

21 A Mr. Frank Arlinghaus.

22 Q Will you describe in narrative form your career
23 in Modern Teleservice from the time of your employment by
24 Mr. Frank Arlinghaus? What did you do in the company?

25 A From September 1st, 1946 until February 19, 1951,

1 mb1m

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2 I was with Modern Talking Picture Service in the direction
3 of their educational and documentary films. Upon reporting
4 to the New York office in 1946, I was given an indoctrina-
5 tion training into the corporation and was then sent to
6 Atlanta, Georgia in February of 1947, to establish the
7 southern division of Modern Talking Picture Services, and
8 was instrumental in the establishing of offices in Dallas,
9 Charlotte, Atlanta, Memphis with licensee exchanges in
10 Houston, New Orleans, Raleigh and Richmond. I was in this
11 activity until February of 1951, when I was brought to New
12 York to start a new activity in Modern Talking Picture
13 Service to be known as the television division.

14 As this was in the early days of television, and
15 there were distribution problems arising that the advertis-
16 ing agencies were not able to accommodate, and they turned
17 to film distributors as a source of relief in getting their
18 television commercials sent to television stations for
19 broadcast. And Modern Talking Picture Service, because
20 of their experience in the distribution of motion pictures,
21 felt that it would be to their good if we looked into the
22 possibility of developing a distribution and procurement
23 service for advertising agencies in the work of their
24 television film commercials and film programs.

25 Q What really was the business of Modern Teleservice?

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2 A Modern Teleservice acted as a service company in
3 the post-production work of filmed or taped television
4 commercials for advertising agencies in behalf of their
5 national advertising accounts.

6 Q What did you do with these television films or
7 tapes?

8 A Upon the completion of a television commercial,
9 the advertising agency and their client would approve the
10 production of a given television commercial, at which time
11 the negative elements would be released to Modern Teleservice.

12 We would first assure that there was a protection
13 print, and if not, that would be the first thing we would
14 do is to strike a protection negative in the event anything
15 happened during the printing of multiple copies of a
16 commercial that were ultimately shipped to stations for
17 broadcast upon instructions and orders from the media
18 departments of the advertising agencies who were our clients.

19 Q When Modern Teleservice began as a separate
20 company, how many employees did it have?

21 A One.

22 Q Who was that?

23 A Myself.

24 Q And when you finally left Modern Teleservice,
25 when was that?

2 A When I left Modern?

3 Q When you left, yes, Modern.

4 A Modern Teleservice?

5 Q Right.

6 A Well, Modern Teleservice was purchased by Sonder-
7 ling.

8 Q Is that when you left?

9 A No, I stayed with Sonderling until February 1st,
10 1969.

11 Q How many employees were then in what was formerly
12 Modern Teleservice?

13 A I would say roughly 40, 45 employees.

14 Q What was the greatest number of employees you
15 ever had in that company?

16 A Approximately 80.

17 Q When was that, do you remember?

18 A I would say in the middle 50s.

19 Q What was your relationship with Frank Arlinghaus?

20 A Mr. Arlinghaus, I had known for --

21 MR. JENSEN: Objection to the form, your Honor.

22 THE COURT: Overruled.

23 Q Please answer the question.

24 A I had known Mr. Arlinghaus prior to my becoming
25 associated with him as an employee -- employer -- employee --

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2 I was with Wilding Picture Productions, who produced the
3 non-theatrical and documentary-type films and was in charge
4 of their distribution department at the time of World War
5 II, and because of transportation troubles arising from
6 our entry into the war, the distribution of the Wilding-
7 produced pictures were given to Modern Talking Picture
8 Service in an arrangement made by Mr. Arlinghaus and Mr.
9 Wilding.

10 And upon my discharge from the Navy in 1946, I
11 returned to Wilding and stayed with them until September of
12 '46 when I went with Mr. Arlinghaus in Modern Talking Pic-
13 ture Service, because of my background in this type of
14 film and its distribution problems.

15 Q Did you see Mr. Arlinghaus other than in business?
16 Did you know him socially?

17 A Yes, I did know Frank and his wife socially.

18 Q What was the frequency of your social visits?

19 A When I was in New York from September until
20 leaving for Atlanta in February, our get-togethers were
21 at luncheons as a foursome: Mr. and Mrs. Arlinghaus,
22 myself and my wife; or Mrs. Arlinghaus would be in the
23 office and we would have chats.

24 Then, after we had moved to Atlanta, Mr. and
25 Mrs. Arlinghaus were on a business trip and came to, of

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2 course, see the operations in Atlanta, and visited us in
3 our home.

4 Then, when I came back to the New York area,
5 living in Greenwich, Connecticut, we continued our social
6 relationships as a foursome from time to time.

7 Q Did there come a time when you had the opportunity
8 to acquire stock in Modern Talking Picture Service or
9 Modern Teleservice?

10 A Yes.

11 Q When was that?

12 A In 1961, '62 and '63.

13 Q How did that come about?

14 A Well, in 1960, Mr. Arlinghaus approached me, on
15 offering the sale of the TV, Modern Teleservice to John
16 and me for a price of \$275,000.

17 MR. JENSEN: Move to strike, your Honor, incom-
18 petent.

19 MR. O'KEEFE: It's not incompetent that he
20 received such an offer, your Honor. He hasn't described
21 any conversations or anything like that.

22 MR. JENSEN: In effect he has, your Honor. This
23 is a backdoor approach to it.

24 MR. O'KEEFE: He is describing what happened to
25 him; something he knows better than anybody else in this

2 world.

3 THE COURT: Overruled.

4 MR. O'KEEFE: Would you read the answer back to
5 the witness.

6 (Answer read.)

7 Q What did you do right after that?

8 A I immediately worked on acquiring sufficient
9 monies to accommodate the price of \$275,000, and I believe
10 in July of 1961, I notified Mr. Arlinghaus that I had
11 financial arrangements whereby I could accept his offer, and
12 I was then notified by Mr. Arlinghaus --

13 MR. JENSEN: Same objection, your Honor.

14 THE COURT: That one I will sustain.

15 Q If I may caution Mr. Ritenour. Mr. Ritenour, under
16 our rules, you are not allowed to describe conversations
17 you had with Mr. Arlinghaus. Your testimony is that you
18 could have bought this company for \$275,000. Did you buy
19 it for \$275,000?

20 A I did not.

21 Q Why did you not buy it for \$275,000?

22 A Because the selling price was increased to
23 \$350,000.24 MR. JENSEN: I object, your Honor for the same
25 reason. Mr. O'Keefe is trying to do indirectly what you

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2 have ruled he can't do directly.

3 THE COURT: I think it's also objectionable
4 really from the standpoint of relevancy. I don't think
5 there is any question in anybody's mind as to the close
6 relationship between Mr. Arlinghaus and both of these
7 gentlemen; and there is no question as to the fact that
8 they did acquire stock in Teleservice before.

9 MR. JENSEN: I'd like to add another ground of
10 objection, your Honor. I will add the dead-man statute
11 for whatever effect it had.

12 THE COURT: That is what I am thinking of.

13 MR. O'KEEFE: We are not claiming against any
14 estate or from or through you or under anybody claiming
15 against any estate. We have no counter-claim in this case.

16 MR. JENSEN: For whatever effect it has, your
17 Honor, I will add that.

18 THE COURT: All right. I question the relevancy
19 of this line of questioning.

20 MR. O'KEEFE: If I may speak to the relevancy
21 just a moment, your Honor.

22 THE COURT: Yes.

23 MR. O'KEEFE: This is a negotiation between Mr.
24 Arlinghaus and these two gentlemen for the purchase of
25 the entire company on their own. They could buy it

2 themselves.

3 THE COURT: I understand that.

4 MR. O'KEEFE: All right.

5 THE COURT: It's too remote.

6 MR. O'KEEFE: Yes, your Honor.

7 Q How much stock did you ultimately acquire in
8 the beginning in Modern Teleservice?

9 A 1,540 shares.

10 Q Did you get it all at once?

11 A No.

12 Q In what fashion did you obtain it?

13 A In sections of seven shares.

14 Q Multiples of seven?

15 A Multiples of seven.

16 Q What was the price you paid for it?

17 MR. JENSEN: Objection as to relevance, your
18 Honor.19 MR. O'KEEFE: The initial price of the stock
20 that is now in question, your Honor. There is testimony
21 already on it.

22 THE COURT: There is testimony on it.

23 MR. O'KEEFE: But I want you to have the
24 defendant's testimony, your Honor.

25 THE COURT: Isn't it in the order at all? Well,

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2 all right.

3 MR. O'KEEFE: I confess that I don't know.

4 THE COURT: All right. I will let him testify
5 as to the price that he paid.

6 Q How much did you pay for it?

7 A \$7 per share.

8 Q I show you Defendant's Exhibit A and ask you
9 whether or not this is your signature that appears on the
10 top line of the signature page?

11 A It is.

12 Q Do you remember when you signed Defendant's
13 Exhibit A? No date back there. You can look here if it
14 helps you.

15 A Fifteenth day of October, 1956.

16 MR. O'KEEFE: Your Honor will recall this exhibit.

17 THE COURT: Yes.

18 Q When did Mr. Arlinghaus die, Mr. Ritenour?

19 A August 24, 1964.

20 Q Prior to his death, had there been any other
21 deaths of any other officers in the company?

22 A Pardon me? I didn't hear you.

23 Q Prior to Mr. Arlinghaus' death in 1964, had
24 any of the other officers or shareholders or signatories
25 to this Defendant's Exhibit A, had they died?

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2 A Yes.

3 Q Who was that?

4 A Mr. Harold Davidson.

5 Q What happened to his stock after his death?

6 MR. JENSEN: Objection, your Honor; irrelevant.

7 THE COURT: I will take the answer. Overruled.

8 A The corporation purchased or agreed upon a
9 price with the estate on the buy-back agreement, upon
10 repurchase of the 40 shares it was converted to treasury
11 stock.

12 Q Was the price computed pursuant to the formula in
13 the buy-back agreement?

14 MR. JENSEN: May I have a continuing objection,
15 your Honor?

16 THE COURT: Yes, you may.

17 A I presume it was.

18 Q Now, after Mr. Arlinghaus died, did the company
19 continue to do business as usual?

20 A Yes.

21 Q Did you continue to be the chief executive
22 officer?

23 A Yes, with additional responsibilities of chairman
24 of the board.

25 Q Who were on the board at that time?

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2 A Before or after?

3 Q After Mr. Arlinghaus died in 1964.

4 A Upon his death, the directors remained Mr. Clem
5 Arlinghaus, Mr. Bill MacCallum, Miss Elsie Cox, and myself.

6 Q Did there come a time when you considered acquir-
7 ing further shares in the company?

8 A Yes.

9 Q When was that?

10 A In 1967.

11 Q And what did you do in 1967 in order to facilitate
12 your idea of acquiring more shares?

13 A We negotiated with a group of gentlemen from
14 Philadelphia.

15 Q When you say, "We," who do you mean?

16 A John Lipsky and myself.

17 Q At this time, or at any time from 1964 on, was
18 Mr. Pepper here your counsel, your attorney?

19 A No, he is not.

20 Q Was he ever your attorney?

21 A He performed the service of making a will for
22 me at one time.

23 Q Did he make a will for your wife?

24 A Yes.

25 Q At the same time?

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2 A Yes.

3 Q Did he charge you for that?

4 A No.

5 Q Other than that, did he represent you in any
6 legal matters?

7 A No, sir.

8 Q Personally?

9 A No, sir.

10 Q Going back to this offer, this time in 1967 what
11 did you do in order to acquire more stock in this company?
12 What were your actions?

13 A Well, through the buy-back agreement, the
14 Arlinghaus estate requested an extension of the buy-back
15 time, which was granted through a resolution of the board
16 of directors.

17 Q When was that, Mr. Ritenour?

18 A I believe it was in 1965.

19 MR. O'KEEFE: Under the terms of the exhibit that
20 is in evidence, your Honor, which speaks for itself, it's a
21 ten-year agreement from '56 to '66.

22 MR. JENSEN: Which number is that?

23 MR. O'KEEFE: A.

24 Q Please continue. I was just refreshing his
25 Honor's memory.

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2 A And the estate of Mr. Arlinghaus made it known
3 that they were not interested in making the stock available
4 to the remaining shareholders or to the corporation under
5 the terms of the buy-back agreement.

6 Q Who made that known to you?

7 A Mr. Pepper.

8 Q When was that?

9 A In '65.

10 Q And who did you understand Mr. Pepper was
11 representing at that time?

12 A Mrs. Arlinghaus and the Arlinghaus estate.

13 Q Did you have a discussion with Mr. Pepper at
14 that time on the subject of making Mr. Arlinghaus' shares
15 available under the buy-back agreement?

16 A I expressed concern and surprise in that it was
17 my understanding that on the death of a shareholder, such
18 shares would be made available to the remaining shareholders,
19 thereby increasing their proportion at holding in the
20 company.

21 Q Where was this conversation with Mr. Pepper
22 held?

23 A I don't recall whether it was in his office, my
24 office, or on the telephone.

25 Q Do you recall whether anyone else participated

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2 in this discussion other than yourself and Mr. Pepper?

3 A I don't recall.

4 Q Did you report this conversation to Mr. Lipsky?

5 A Yes.

6 Q What next happened then in your plan to acquire
7 stock in this company?

8 A Well, when John and I found that the stock would
9 not be made available, it was our desire to somehow make
10 arrangements whereby we could buy stock to become larger
11 participants in the corporation ownership as our ability
12 to buy stock as provided by Mr. Arlinghaus stopped upon
13 his death.

14 Q I am asking you what you did. We all understand
15 how you felt. What did you do? Did you make any offers?
16 How did you go about acquiring these shares?

17 A Trying to find monies sufficient enough to make
18 an offer to the stockholders to buy their total ownership
19 in the company.

20 Q What did you do?

21 A I called a Mr. -- he was a consultant -- Mr. Mintz.

22 Q Before you start, Mr. Ritenour, what are you
23 looking at now? What is that?

24 A Copies of my records which are already in the --

25 Q Are you trying to refresh your recollection by

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2 use of that paper?

3 A Yes.

4 Q Go ahead, then.

5 A On April 5, 1967 I met with a Mr. Mintz of
6 Previews, Gray Associates, who was a management and
7 financial consultant.

8 Q Where did you meet with him?

9 A At the Rockefeller Center Luncheon Club.

10 Q What was the subject of the luncheon?

11 A To explain to him my position and whether or not
12 through his company, possible buyers could be arranged.

13 Q And were buyers arranged through his company?

14 A Through Mr. Mintz, I was put in contact with a
15 Mr. Harris Shapiro.

16 Q Did you report that to Mr. Lipsky?

17 A Yes.

18 Q Did you report that to Mr. Pepper?

19 A Yes.

20 Q When did you meet Mr. Shapiro?

21 A On April 10, 1967.

22 Q What was the result of that meeting?

23 A Mr. Shapiro advised us that he had a group of
24 men that would possibly be interested in acquiring Modern
25 Teleservice.

2 Q Had you furnished them, Mr. Shapiro and his
3 group from Philadelphia, did you furnish them with informa-
4 tion in the sense of financial information on the company,
5 and operating reports, balance sheets, and that type
6 thing?

7 A Yes, sir.

8 Q And did you give that to them at your first
9 meeting on April 10, 1967, or was it given to Mr. Mintz or
10 how did that happen?

11 A I am certain that no financial reports were
12 submitted on the first meeting because this would have
13 been discussed with the corporate legal counsel, Mr. Pepper,
14 as to the legality and authorization to do such.

15 Q Sometime between April 5, 1967 and April 25,
16 1967, you gave financial data to the Philadelphia syndicate,
17 did you not?

18 A Yes.

19 Q Did they have it for a period of time before
20 you were notified that they were interested in making an
21 offer?

22 A Yes.

23 Q When were you authorized by them to make an offer
24 of purchase?

25 A On April 24, 1967.

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2 Q What was the price that they set for the shares?
3 A \$15. John and I were authorized by the syndi-
4 cate to make an offer for the shareholders at \$15 per
5 share.

6 Q Did that \$15 figure originate with you or with
7 Mr. Shapiro or with someone else? Where did it come
8 from, the \$15?

9 A The syndicate came up with that price.

10 Q Was it suggested by you as a price?

11 A I don't believe so.

12 Q You then wrote a letter on April 25, 1967 --
13 which is already in evidence, your Honor -- did you not,
14 Mr. Ritenour?

15 A Yes.

16 Q And that offered to buy all of the shares in
17 Teleservice for a price of \$15 a share, did it not?

18 A Yes.

19 Q That was subsequently raised to \$20 a share,
20 isn't that right?

21 A Yes.

22 Q On May 10, 1967, you remember a luncheon, I am
23 sure, at Rockefeller Center. Do you remember that?

24 A Yes.

25 Q Tell us about that luncheon. When did you

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2 arrive there, and what happened at the luncheon?

3 A John and I arrived at the Luncheon Club at
4 approximately 12:00 o'clock, noon, and met with Clemens
5 Arlinghaus, Rosalie Arlinghaus and Sidney Pepper, and dis-
6 cussed the purchase by the syndicate at a rate of \$15, as the
7 Arlinghaus estate did not feel that the \$15 price was
8 sufficiently high and wanted to further discuss the matter
9 with John and me.

10 Q Had you had response from any of the other share-
11 holders with respect to the \$15 offer contained in your
12 letter of April 25, 1967?

13 MR. JENSEN: Objection; incompetent and
14 immaterial.

15 THE COURT: Overruled. You may answer.

16 A We had received acceptance from all other share-
17 holders; and Mr. MacCallum had, in his acceptance, stipulated
18 that contingent upon a higher price, that he would receive
19 the highest price offered.

20 MR. JENSEN: I move to strike, your Honor. May
21 I have a continuing objection to communications with others
11/15/67
22 here?

23 THE COURT: No. You may not. You may have an
24 objection but I am going to overrule it.

25 MR. JENSEN: Yes. Do I have to repeat it every

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2 time?

3 THE COURT: No.

4 MR. JENSEN: That is what I meant.

THE COURT: No, no.

6 Q Can you identify this document?

7 A Yes, sir.

8 MR. O'KEEFE: May I have that marked as defendant's
9 exhibit.

12 Q I show you Defendant's Exhibit N. I ask you if
13 you received that letter.

14 Yes, I did.

15 Q. Do you recall receiving it?

16 A Yes, during business working hours

18 April 22, 1963

Q. Do you know the names of the two men?

20 | Page

21 | Page

22 A. J. H. Hilditch, M. M. M. S.

23 | Page

24 A He was vice-president of Modern Talking Picture
25 Service and a director of Modern Teleservice, Inc., and a

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2 Ritenour-direct
shareholder of both corporations.

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3 MR. O'KEEFE: I offer as Defendant's Exhibit N
4 this letter, your Honor.

5 MR. JENSEN: I object to it, your Honor, as
6 incompetent; and it's irrelevant and immaterial.
7

THE COURT: Overruled.

8 Do you have any objection, Mr. Matthews?

9 MR. MATTHEWS: No objection.

10 THE COURT: All right, it may be received.

11 (Defendant Ritenour's Exhibit N for identifica-
12 tion received in evidence.)

13 Q I show you these documents and ask you whether
14 or not you recall receiving them.

15 A Yes, I do.

16 Q Are they all from shareholders that you knew?

17 A Yes.

18 MR. O'KEEFE: I offer as one exhibit Defendant's
19 O, three pieces of paper, your Honor, being communications
20 to the witness from Miss Cox, Mrs. Schlereth and Mr.
21 Bogards.

22 (Defendant Ritenour's Exhibit O marked for
23 identification.)

24 MR. O'KEEFE: I offer O in evidence, your Honor.

25 MR. MATTHEWS: No objection.

2 MR. JENSEN: I object to each constituent part
3 of this Exhibit C on the ground it's incompetent and
4 irrelevant.

5 THE COURT: It's overruled and may be received.
6 (Defendant Ritenour's Exhibit O for identifica-
7 tion received in evidence.)

8 MR. O'KEEFE: Your Honor, these have to do with
9 the \$15 offer.

10 THE COURT: Yes, I understand.

11 Q I show you three documents and ask you if you
12 received these, each of these?

13 A Yes.

14 Q Do you recognize the senders as Mr. MacCallum,
15 and one is a letter from you to Mr. MacCallum, is that
16 not so?

17 A Yes.

18 MR. O'KEEFE: Would you mark these for identifi-
19 cation, please?

20 (Defendant Ritenour's Exhibit P marked for
21 identification.)

22 Q These are a later date, isn't that so?

23 A Yes.

24 MR. O'KEEFE: I offer these, your Honor, as
25 Defendant's Exhibit P. They concern the \$10 offer, your

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MR. JENSEN: I object to each of the constituent parts of Exhibit P on the ground that each one is incompetent and irrelevant and immaterial.

THE COURT: Overruled.

Mr. Matthews, do you have any objection?

MR. MATTHEWS: I haven't seen them yet, sir.

THE COURT: Show them to Mr. Matthews.

MR. MATTHEWS: No objection.

THE COURT: It may be received.

(Defendant Ritenour's Exhibit P for identification received in evidence.)

Q Now, I go back to that luncheon, Mr. Ritenour. You said you attended, Mr. Lipsky attended, Mr. Pepper, and who else?

A Mr. Clemens Arlinghaus and Mrs. Rosalie Arlinghaus.

Q Tell us what happened at that luncheon.

A Other than advising them about the stipulated \$15 purchase, I wanted to clear the air once and for all and in front of Mrs. Arlinghaus that about the rumors and gossip of John Lipsky and myself threatening to leave the corporation.

I had not and I never did ever threaten to leave

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2 the corporation, to Mrs. Arlinghaus or to any of the
3 officers or shareholders.

4 Q I missed the last part of the answer. Can I
5 have the last part of the answer.

6 (Last part of last answer read back.)

7 THE COURT: How about Mr. Pepper?

8 Q Did you ever threaten to leave?

9 THE COURT: Did you ever say that to Mr. Pepper?

10 Q Did you ever say that to Mr. Pepper: "If they
11 don't sell me the stock, I am going to quit?"

12 A I never did say that to Mr. Pepper.

13 Q When did you next hear from anyone with respect
14 to that \$15 offer?

15 A On May the 11th, 1967.

16 Q What was the response to the offer?

17 A We were advised by the Arlinghaus and Eberle
18 interests that they would accept a \$20 offer.

19 Q Was a \$20 offer made?

20 A Yes.

21 Q Was it accepted?

22 A Yes.

23 Q Did the deal close?

24 A No, it did not.

25 Q What happened?

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2 A The syndicate was unable to come up with the
3 necessary monies on the day of closing.

4 Q When was the day of closing scheduled for?

5 A June 9th, 1967. And the \$10,000 earnest money
6 was forfeited by the syndicate.

7 Q Did there come a time when the board of directors
8 of Modern Teleservice requested you and Mr. Lipsky to find
9 another purchaser for the company, Modern Teleservice, Inc.?

10 A Yes.

11 Q When was that?

12 A At the board of directors' meeting on June 14,
13 1967.

14 Q Do you recall who was present at that board of
15 directors' meeting?

16 A Clemens Arlinghaus, Howard Eberle, Milton Lewis,
17 William MacCallum, John Lipsky, myself, and Mr. Sidney
18 Pepper by invitation.

19 Q Thereafter, after that meeting which was held
20 on June 14, 1967, you wrote a letter, did you not, on June
21 30, 1967, which is an exhibit here? It is Plaintiff's
22 Exhibit 3. That is July 1st, 1967. Do you recognize that
23 letter?

24 A Yes.

25 Q And you offered to purchase shares from Mrs.

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2 Arlinghaus, you and Lipsky, 30 percent of the outstanding
3 shares, did you not?

4 A Yes.

5 Q How much did you offer to pay for those?

6 A \$10 per share with a guarantee that in the event
7 the corporation was sold, she would receive a minimum of
8 \$20 for each share held by the estate prior to any selling
9 of shares to John and me.

10 Q Who formulated that offer? How did you arrive
11 at that figure?

12 A John and I arrived at that figure of \$10 as we
13 had previously purchased shares at \$7; and we felt that a
14 \$10 price with a guarantee of \$20 was fair, equitable, and
15 justified.

16 Q Did you have meetings with Mr. Pepper for
17 formulating that price?

18 A Yes.

19 Q When were they?

20 A Between June 9th, when the syndicate deal was
21 aborted, and the preparation of the letters on June 30,
22 1967, making our offer known to the shareholders.

23 Q How did Mr. Pepper come to participate? What
24 occurred to make that possible?

25 A Mr. Pepper was in the meetings as counsel for the

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2 corporation, and as representative of the shareholders of
3 the corporation.

4 Q Did you invite Mr. Pepper to become a participant
5 with you to the extent of 10 percent of this offer to
6 purchase?

7 A I did not.

8 Q Who first suggested that Mr. Pepper take a
9 position in this company?

10 A Mr. Pepper.

11 Q When was that?

12 A I do not recall the exact date.

13 Q Do you recall, is it your recollection, Mr.
14 Pepper's participation in the purchase of shares in this
15 company was to be in lieu of some type of a legal fee for
16 services he had rendered to the company?

17 A No.

18 Q What is your recollection on that subject?

19 A Of his ability to buy?

20 Q Yes.

21 A He asked if John and I had any objection to his
22 becoming a participant in the purchase of shares of stock
23 from the shareholders, at which time I said his ability
24 to buy shares from the other shareholders was his business,
25 and that he would have to work directly with the other

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2 shareholders.

3 Q Was that offer accepted, the \$10 offer, and did you
4 subsequently acquire a 30 percent, you and Mr. Lipsky,
5 acquire a 30-percent interest in this company?

6 A Yes.

7 Q During this period following July 1st, '67
8 you were still, I take it, authorized by the board of
9 directors of Modern Teleservice to seek out buyers of the
10 stock or the assets of this company, were you not?

11 A Yes.

Q What efforts did you make in that regard?

13 A Well, as resolved by the board of directors, the
14 first thing we did was to make arrangements with a legal,
15 consulting firm, which we did: Smith, Barney. At the
16 board of directors' meeting it was stipulated that each
17 director provide me with any suggestions they might have
18 as to firms that I would research and finally select one
19 that would represent us as our agents in the establishment
20 of a possible acquisition or merger arrangement.

21 Q Did you finally find somebody?

22 A YCS.

23 Q Who was that?

²⁴ On July 25, 1863, a letter from Tom Calhoun of

25 Smith, Barney, to Mr. Pepper confirming his understanding as

2 to their being our financial consultant agents.

3 Q Did Smith, Barney bring any potential buyers to
4 your attention?

5 A Yes.

6 Q Who were they?

7 A MTI -- MPO.

8 Q What does that stand for?

9 A They were basically producers of commercial
10 television films.

11 Q Who else? Just list them, Mr. Ritenour. We'll
12 see whether we have to go through them or not.

13 A I believe that is the only arrangement that Smith,
14 Barney introduced.

15 Q Now, between July 1967 and the ultimate sale
16 of the company to the Sonderling Broadcasting Company, were
17 there a number of other people expressing an interest in
18 buying the assets or stock of Modern Teleservice?

19 A Yes.

20 Q Do you recall who they were, these potential
21 buyers?

22 A A Mr. MacCandless, representing the Los Angeles
23 Times and Chandler interests, introduced through Mr. MacCallum,
24 Screen Gems, Bonded Film Services, Lehigh Valley Industries,
25 and Furua.

2 Q After the Fuqua deal, were there other expressions
3 of interest?

4 A After the Fuqua deal was aborted?

5 Q Yes.

6 A Immediate arrangements were made with Sonderling
7 Broadcasting.

8 Q Did you ever have discussions with Warner-Sever
9 Art

10 A I believe so.

11 Q Do you recall having any discussions with Rear,
12 Stearns?

13 A I don't recall.

14 Q Do you recall having any discussions with a Mr.
15 Wolfson of Wometco?

16 A I did not have any direct dealings with Wometco.

17 Q Have you ever heard of National Steel & Copper-
18 plate Co.?

19 A I don't recall.

20 Q Of the various negotiations and discussions you
21 had with potential buyers, how many resulted in something
22 tangible, something firm?

23 A Only one.

24 Q Which one?

25 A Well, two: Fuqua and Sonderling.

2 Q You don't consider the syndicate offer to be
3 firm?

4 A Oh, yes.

5 Q Three?

6 A I stand corrected. Three.

7 Q During this period of time, did you make any
8 reports of your progress or lack of progress to your board?

9 A Yes, at each board meeting, full and complete
10 discussion of what transpired since the previous meeting.

11 Q What would be the next board meeting after July
12 of 1967? Would it be in November?

13 A No, September there was a board meeting.

14 Q Who attended that meeting? Do you recall?

15 A Clem Arlinghaus, Howard Eberle, Bill MacCallum,
16 Milton Lewis, John Lipsky, and myself.

17 Q Did you make any report at that board meeting
18 of progress in the area of selling the assets or stock of
19 the company?

20 A Yes, I reported to the board at that meeting
21 that a letter from Tom Hennessy of Fuqua, to Pepper, had
22 been received outlining the basic proposal, for considera-
23 tion of the Modern shareholders.

24 Q Did you report to anyone that was not on the
25 board?

1 mb1m

Ritenour-direct

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2 A That was not on the board?

3 Q Yes.

4 A Sidney Pepper.

5 Q Did you report that meeting with anyone other
6 than Mr. Pepper, who was counsel for the company, and to
7 the members of the board of directors of the company?

8 A Not that I recall.

9 Q When was the next board meeting?

10 A The next board meeting was on November 17, 1967.

11 Q Who was present?

12 A Clemens Arlinghaus, myself, Lipsky; and by
13 invitation, Sidney Pepper and Richard Russell.

14 Q Who is Richard Russell?

15 A He was the treasurer of Modern Teleservice.

16 Q He subsequently became a director, did he?

17 A Yes. He was elected a director at that meeting,
18 to replace one of the positions held by MacCallum and
19 Eberle, who resigned as directors on November 17, 1967.

20 Q Did the board approve your contract with Fuqua?

21 A Yes.

22 Q Did the shareholders approve the contract with
23 Fuqua?24 A At the board of directors' meeting on November
25 17th, I asked for board approval of the Fuqua proposal

1 mb1m

Ritenour-direct

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2 so that it could be presented to the shareholders for their
3 consideration; and a stockholders' meeting was held on
4 November 17 of 1967 immediately following the directors'
5 meeting.

6 Q There has been testimony here of a luncheon
7 held on December 20, 1967 that followed the Fuqua deal
8 and preceded the Sonderlin deal. Do you recall such a
9 luncheon?

10 A Yes.

11 Q Where was it held?

12 A At the Baltusrol Country Club in New Jersey.

13 Q Who attended?

14 A Mr. Pepper, Mrs. Arlinghaus, and myself.

15 Q What was the purpose of that luncheon?

16 A I had been called several days prior to December
17 20th by Mr. Pepper, asking if I would join he and Mrs.
18 Pepper at the Baltusrol Country Club to discuss certain
19 matters.

20 Q You mean Mrs. Pepper?

21 A I mean Mrs. Arlinghaus, and Mr. Pepper, to discuss
22 certain matters that Mrs. Arlinghaus wanted to bring to
23 my attention.

24 Q What matters?

25 A She wanted me in her behalf to see what I could

1 mblm

Ritenour-direct

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2 do in arranging a meeting between Tom Hennessy of Fuqua
3 and Carl Lenz, president of Modern Talking Picture Service,
4 in the hopes that Fuqua would also negotiate the acquisition
5 of Modern Talking Picture Service.

6 Q What else did she say to you, if you remember?

7 MR. JENSEN: Objection, your Honor. I think it's
8 irrelevant.

9 THE COURT: No, I am going to take it, and see
10 where it gets. Overruled.

11 Q What did she say to you?

12 A She asked me to do whatever I could to arrange
13 a meeting between Hennessy and Lenz to start favorable
14 negotiations between the two companies.

15 Q Did she, at this time in December of 1967, again
16 bring up the question of your leaving Modern Teleservice?

17 A To my recollection, that was not mentioned at
18 that meeting. And had it been mentioned, it would have been
19 a little ridiculous, because the Fuqua deal had already
20 been agreed upon, and it was six months after our acquisi-
21 tion of our position and there would have been no need or
22 necessity. Why would we leave?

23 Q You were sitting here, were you not, when Mrs.
24 Arlinghaus was testifying?

25 A Yes.

1 mblm

Ritenour-direct

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2 A Yes.

3 Q Why was that?

4 A Because our forecast of earnings did not reach
5 the forecast which I had given to Fuqua for the year of
6 1967.

7 Q Was that built into the Fuqua contract?

8 A Yes.

9 Q And they had a way out in the event your earnings
10 dropped?

11 A Yes.

12 Q When did you find out that Fuqua was not going
13 to exercise their right to buy your shares?14 A In a letter from Mr. Clayman of Fuqua, to me,
15 dated March 5th 1968, stipulating that Fuqua was exercising
16 its right not to close.

17 Q When did the Sonderling deal present itself?

18 A On or about March 15, 1968.

19 Q So that's just ten days later?

20 A Yes.

21 Q How did the Sonderling deal come to you? By
22 "you" I mean Modern Teleservice.23 A Mr. Sonderling was introduced to us by Harris
24 Shapiro, Commonwealth Development Corp.

25 Q Is that the same Shapiro who was back in the

1 mb1m
2 syndicate?

A285

Ritenour-direct

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3 A Yes.

4 Q And did Shapiro ultimately receive compensation
5 for finding Mr. Sonderling?

6 A Yes.

7 Q Who paid him?

8 A The stockholders of Modern Teleservice.

9 Q Did Mrs. Arlinghaus, to your knowledge, know
10 that Shapiro was acting as a finder in the Sonderling
11 transaction?

12 A Yes.

13 Q Do you know how that came to her attention?
14 Did you tell her?

15 A No.

16 Q How did she find out?

17 A There was a letter from Shapiro to the stockholders
18 stipulating the conditions of the sale, which was presented
19 to all shareholders and each shareholder signed their
20 individual consent to the arrangement offered by Mr.
21 Shapiro.

22 Q Prior to the Sonderling sale, did the stockholders
23 consent to the sale?

24 A Yes.

25 Q All of the shareholders?

2 A Yes.

3 Q Including Mrs. Arlinghaus?

4 A Yes.

5 Q When was that done?

6 A That was done at a special meeting of the stock-
7 holders on March 22nd, 1968.

8 Q Incidentally, was Mrs. Arlinghaus a director
9 of your company ever?

10 A Yes.

11 Q When did she become a director?

12 A On March 22nd, 1968.

13 Q How long did she serve, do you know?

14 A From that date until the corporation was
15 acquired by Sonderling.

16 Q The Sonderling sale was also approved by your
17 board of directors on the same day, was it not?

18 A Yes.

19 Q March 22, 1968?

20 A Right.

21 Q Have you made all the payments now on your \$7
22 note to Mrs. Arlinghaus?

23 A Yes.

24 Q When were the last payments made?

25 A I don't recall the date the final payment to Mrs.

2 Arlinghaus was made as I made an offer on May 28, 1968
3 to all shareholders of my desire to pay all outstanding
4 promissory notes, which was in the agreed relationship
5 that the promissory note computed in advance at our desire.
6 All shareholders with the exception of Mrs. Arlinghaus,
7 who did not accept my offer to pay, and I still continued
8 to pay my interest on the promissory notes until some later
9 date when we finally were successful in Mrs. Arlinghaus
10 accepting payment with the stipulation that such payment
11 would have no effect on this case.

12 MR. O'KEEFE: I direct your attention, your
13 Honor, to the pre-trial order, and there are portions
14 of letters between Mr. Jensen and myself on this subject.
15 I will just direct your attention to it.

16 A It's on pages 7 and 8 of the pre-trial order.

17 Q Have you followed the fortunes of Modern Tele-
18 service since the sale to Sonderling?

19 A Yes.

20 Q What's happened to the company?

21 MR. JENSEN: Objection, your Honor, irrelevant;
22 immaterial.

23 THE COURT: Sustained.

24 MR. O'KEEFE: Just a little history, your Honor.

25 MR. JENSEN: Too recent.

mb1m

Ritenour-direct/cross

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THE COURT: I have too much history already.

Q During all of the time that you were employed by Modern Teleservice, did you ever have a written contract?

A No.

MR. O'KEEFE: I have no further questions, your Honor.

CROSS-EXAMINATION

BY MR. JENSEN:

Q On what date in March 1968 did you say that Mrs. Arlinghaus was elected a director for the first time of Teleservice?

A On March 22nd, 1968, a stockholders' meeting was held --

Q Yes.

A -- at which time Mrs. Arlinghaus nominated by motion and seconded by Howard Eberle, the nomination of the following persons to serve as directors: Rosalie Arlinghaus, Elsie Cox, John Lipsky, Richmond Ritenour, Richard Russell, and Carol Menditto.

Q And Carol Menditto was Mr. Pepper's secretary, wasn't she?

A I believe so

Q Yes, sir, and that was a windup board of directors, wasn't it, and in point of fact, on the 8th of April, the

1 mtlm .

Ritenour-cross

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2 you should make it in writing and write Mrs. Arlinghaus
3 about this for the record? Did you ever do that, sir?

4 A No.

5 Q Isn't it a fact that even after the Rainbow Room
6 luncheon, which came on May 10, just about three weeks
7 after you first got the approval of the syndicate to buy,
8 and mentioned to Mr. Pepper that you had done that, that
9 after the Rainbow Room you heard those rumors again, sir?

10 A Yes, I did.

11 Q Did you confront Mrs. Arlinghaus again?

12 A No.

13 Q On this Baltusrol luncheon, let me ask you this:
14 Did you meet with Mrs. Arlinghaus, have lunch with her
15 there, on more than one occasion?

16 A No, sir. She was the member of Baltusrol.

17 Q Was there some other occasion on which you had
18 lunch with Mrs. Arlinghaus at any time after April 25, 1967
19 where the occurrence about which she testified could or
20 may have taken place, sir?

21 A I don't follow your question.

22 Q All right. I think it was too complicated.

23 Do you remember, as Mr. O'Keefe reminded you a
24 little while ago, that Mrs. Arlinghaus said that at one
25 time Mr. Pepper confronted you with this threat and asked

1 mb1m

2 ***
3 Ritenour-cross

4 384

5 what board meeting it was that we were instructed to find
6 a possible purchaser of the corporation.7 Q Maybe I can refresh your recollection. Was it
8 not the June 12 or 14, 1967 meeting at which that happened?

9 A I believe so.

10 Q So the next board meeting would have been after?

11 A In September.

12 Q Of '67, 1967?

13 A Yes, our board met quarterly.

14 Q Mrs. Arlinghaus, you said, knew that Shapiro
15 was the finder of Sonderling because she signed an agree-
16 ment when the Sonderling agreement, sale, was in the works;
17 right, sir?

18 A Yes, sir.

19 Q For all you knew that is the first time she knew
20 of Mr. Shapiro's efforts, isn't that right? You had no
21 reason to think she knew earlier about Mr. Shapiro?

22 A I do not know.

23 Q So this would have been in 1968 that she learned,
24 as far as you know?

25 MR. JENSEN: That's all I have, your Honor.

THE COURT: Mr. Matthews?

MR. MATTHEWS: No questions.

MR. O'KEEFE: No questions.

1 mblm

Lipsky-cross

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2 you?

3 A That is very true, sir.

4 Q You were going to buy their stock, too?

5 A Yes, sir.

6 Q At this luncheon, Mr. Lipsky, did you hear anything about rumors, rumors that you threatened to quit?

7 You didn't, did you, sir?

8 A There was a rumor that I was quitting and I had
9 an employee walk into my office and say, "Mr. Lipsky, are
10 you going to quit?" and I said, "No."

11 Q I am sorry. I probably didn't make clear --

12 THE COURT: At the luncheon, he means.

13 Q At the luncheon, did anyone mention these rumors?

14 A Yes, sir, Mr. Ritenour did.

15 Q Mr. Lipsky, do you recall testifying on a deposition herein on January 4, 1972, and being asked this
16 question and giving these answers?

17 MR. O'KEEFE: What page, please?

18 MR. JENSEN: 72, line 5.

19 MR. O'KEEFE: Are you reading one question or
20 two questions?

21 MR. JENSEN: Two questions and two answers.

22 MR. O'KEEFE: I mean he hasn't answered the first
23 part of your question: "Does he recall being examined

2 A That is correct.

3 Q At the time of the \$3 cash, \$7 note deal, did
4 you offer to participate in that and arrange to take over
5 for Mrs. Pepper ten percent of the --

6 A As testified to, I discussed the matter with Mr.
7 Ritenour and Mr. Lipsky, to see if they had any objection
8 to the acquisition of stock on behalf of my wife. They
9 had no objection, subject to my negotiations with the
10 shareholders.

11 I proceeded to negotiate with the shareholders
12 and obtained their consent. That resulted in the June
13 30th letter agreement, which is in evidence here.

14 Q Was there socializing between your family, you
15 and Mrs. Pepper, and Mr. and Mrs. Arlinghaus?

16 A Yes.

17 Q How far back did that begin and continue?

18 A Well, with Mrs. Arlinghaus, it was after their
19 marriage, and I heard her testify it was in 1942. I don't
20 remember that we had much socializing at each other's
21 homes during the war period. I may have seen both of them
22 at company affairs, but it wasn't until the war that, to
23 my recollection, that we visited their home and they
24 visited me.

25 Q How did you happen to put the stock that you

1 mb1m

Pepper-direct

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2 I am volunteering this, your Honor.

3 THE COURT: All right, go ahead and answer.

4 Q Well, the Fuqua deal fell through.

5 , A Well, we first started with Fuqua. Sonderling,
6 a client of Harris Shapiro, learned somehow or other
7 that we were negotiating with Fuqua, and he called up
8 Shapiro in my presence when I was there and spoke to me
9 and begged me to listen to him. I said we could not do it,
10 having already started with Fuqua.

11 When the Fuqua deal ended, I reminded Shapiro
12 of Sonderling's interest in it. Shapiro called Sonderling
13 in my presence, and Sonderling offered to fly to New York
14 from California to discuss the deal. He did appear after
15 preliminary negotiations. We were able to make a contract
16 which was ultimately consummated.

17 Q That has been heretofore detailed on the record
18 of this trial, has it not?

19 A I don't think it's been detailed, but I think
20 the Sonderling contract is an exhibit in the case, and sets
21 forth everything.

22 Q Did you disclose to Mrs. Arlinghaus that Mrs.
23 Pepper was taking your share of the \$3-\$7 proposal?

24 A Mr. Matthews, I don't like to correct you but it
25 was never my share. I told Mrs. Arlinghaus that I wanted

1 mb1m

2 *** Pepper-cross

3 410

4 because there has been testimony about the ultimate \$20
5 offer and that arose as a result of that, so I think it
6 is connected.

7 MR. JENSEN: I wish to press my objection.

8 THE COURT: All right.

9 A Mrs. Arlinghaus, Clemens Arlinghaus, Messrs.
10 Ritenour, Lipsky and I were present at the luncheon.

11 As near as I can gather, the main purpose of the
12 meeting was to see if the -- if Mr. Ritenour's prior
13 offering price on behalf of his syndicate could be increased
14 beyond \$15 and there was a discussion along those lines,
15 Mrs. Arlinghaus claiming that \$15 was inadequate for her.

16 I don't remember whether I was asked to see if
17 I could get a higher price, but that is what I proceeded
18 to do after the meeting.

19 Q You had lunch and then you had a separate meet-
20 ing downstairs?

21 A Yes.

22 Q I am just talking about the lunch now.

23 A At the luncheon there's been testimony that a
24 discussion of the possible resignation of Messrs. Lipsky
25 and Ritenour came up. If it did, I have no recollection
of it, but all I can say is that they never threatened
to resign at any time in my presence.